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No. 11 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

Brief of the State of Louisiana in Opposition to Motion for Judgment by the United States

STATEMENT OF THE CASE

The United States alleges that it is entitled to exclusive possession of, and full dominion and power over the lands, minerals and other things underlying the Gulf of Mexico, lying more than three geographical miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Louisiana, extending seaward to the edge of the continental shelf, and is entitled to an accounting for all sums of money derived by the State of Louisiana from the said area since June 5, 1950. (Complaint Par. VI).

It is further alleged that in the case of *United States vs. Louisiana*, 340 U.S. 899, this Court entered its decree enjoining the State of Louisiana from taking or removing mineral products from this area and di-

rected the state to account to the United States for all sums derived therefrom after June 5, 1950. (Complaint Par. III).

In answer to the Complaint, Louisiana denies generally every allegation made by the plaintiff and avers that the United States has never had any title to or possession of the submerged lands in the Continental Shelf of the Gulf of Mexico, and has never had possession thereof except to hold the same in trust, as a part of the Louisiana territory, for the State of Louisiana to be thereafter formed and admitted to the union as required by the Treaty of Paris of April 30, 1803, (8 Statute 200).

Defendant further states that the only dominion and control possessed by the plaintiff over the waters and submerged lands of the Gulf of Mexico relate to the regulation and control of the use of the same for purposes of interstate and foreign commerce, navigation, and the national defense. (Ans. Par. II).

Louisiana admits that a decree was entered in the case of the *United States vs. Louisiana*, 340 U.S. 899, which decree speaks for itself, but shows that the theory upon which said decree was based has been modified and superseded by the provisions of the Submerged Lands Act of May 22, 1953 (43 U. S. C. 1301) and by the Outer Continental Shelf Lands Act of August 7, 1953 (43 U. S. C. 1331).

Defendant avers that the Submerged Lands Act recognizes and acknowledges the coastal states to be the sovereign owners of all lands beneath navi-

gable waters within their boundaries, including the marginal seas and submerged lands therein, and confirms their titles thereto; that the legislative history of this act shows that throughout the history of this nation the states have been recognized to be the sovereign owners of such lands and waters. (Ans. Par. IV).

The state also alleges that the Outer Continental Shelf Lands Act extended the boundary of the United States to the edge of the continental shelf, and that the Constitution of the United States, as construed by numerous decisions of this court, declares that the boundaries of the separate sovereign states are coextensive with and co-terminous with the boundaries of the United States, and that any provision in the Submerged Lands Act which might limit the boundaries of the state at a line short of the national boundary, and any provision of the Outer Continental Shelf Lands Act which may grant to the federal government exclusive possession, or proprietary rights in the lands and resources of the continental shelf are unconstitutional and of no effect. In this connection the state avers that in so far as the said acts permit the Federal Government to exercise property rights in said area they are violative of the Treaty of Cession entered into by the United States with France on April 30, 1803, which said Treaty under Article 6 of the Constitution is the Supreme Law of the land, and vests rights in the State of Louisiana which the Federal Government can not divest without violating the 5th

Amendment to the Constitution; that said acts if so construed, would violate Article IV Sections 3 and 4, of the United States Constitution to the extent that they would permit the Federal Government to invade property and property rights guaranteed to the State of Louisiana and would unlawfully change the boundaries of the state without its consent; and that said acts in so far as they recognize property rights in the United States or restrict the boundaries of the state, exceed the powers granted to the Federal Government by the constitution, and would therefore conflict with the 9th Amendment thereto, and with the 10th Amendment which reserves to the states all powers and rights not specially granted to the United States. (Ans. Par. IV).

Louisiana therefore claims that its boundaries are co-extensive with the boundaries of the United States and extend to the edge of the continental shelf, and that within such area the Federal Government can only exercise powers granted to it by the constitution or necessarily implied in the powers expressly granted.

In the alternative, the state claims that its seaward boundaries extend at least three marine leagues into the Gulf of Mexico; that the United States has at all times prior to the aforesaid acts of Congress passed in 1953 recognized the fact that states bordering on the Gulf of Mexico own the marginal seas and subsoil thereof to a distance of at least three leagues, and

has never heretofore asserted that state ownership consists of anything less.

Further in the alternative, Louisiana shows that the Submerged Lands Act recognizes the boundaries of any and all States bordering the Gulf of Mexico to be three leagues from coast if it was so provided by the Constitution or laws of any such State at the time, or prior to the time such State became a member of the Union; that Louisiana's boundary was fixed at three leagues from coast in its Constitution and in the Act of Congress admitting the State to the Union; and that any other interpretation of Louisiana's Constitution and Act of Admission would result in discrimination against this State as to the extent of its sovereignty, and would violate the "equal footing" clause in the Act of Admission, since other Gulf Coast States such as Texas and Florida have boundaries recognized as extending three leagues from coast into the Gulf of Mexico.

Further answering Louisiana says that it has effectively occupied the continental shelf over such a long period of time that a conclusive presumption of sovereignty, title and ownership results therefrom. (Ans. Page 24-28). In support of these allegations of effective occupancy and possession Louisiana has filed a motion to take the depositions of 14 witnesses and to file documentary evidence of which this Court will not take judicial notice.

The United States has opposed Louisiana's Motion to take depositions and has filed a Motion for

Judgment which brings before the court the merits of the claims of both parties as reflected by the pleadings and by facts of which this court will take judicial notice.

Although not an issue in the case, and solely for the convenience of the Court, Louisiana makes the following additional statement, relating to the agreement between the United States and the State of Louisiana:

On June 11, 1956, following proceedings initiated in the State courts by the State of Louisiana to enjoin officials of the United States and prospective bidders from further leasing and operations in the disputed tidelands area, this Court entered an order which provided, in part, (351 U.S. 978):

> "that the State of Louisiana and the United States of America are enjoined from leasing or beginning the drilling of new wells in the disputed tidelands area pending further order of this court unless by agreement of the parties filed here."

On October 12, 1956, an agreement between the United States and the State of Louisiana, effective on the same date, was filed in these proceedings pursuant to that order. Without prejudice to the respective rights, claims and demands of the parties, the agreement defines the disputed tidelands area within which further drilling was consented to, subject to the execution by lessees of agreements with the State and

the United States on stipulated forms. Further agreement is made for the impoundment of all bonuses, royalties and rentals received from leases in the disputed area and for such funds to be held in escrow pending the termination of this litigation. Each of the parties upon receipt of the impounded funds and subject to compliance by the lessees with the requisite agreements, agrees to validate and give recognition to leases affecting an area with respect to which it is the ultimately successful party.

QUESTIONS PRESENTED

1. Does the United States have the right to dispossess the State of Louisiana from submerged lands and resources on the Continental Shelf in the Gulf of Mexico which have been effectively possessed and occupied by the State over a long period of time, with the acquiescence of the federal government, and without protest from any foreign nation?

2. Do the boundaries of the United States extend to the full limit of the Continental Shelf in the Gulf of Mexico, and if so, is it not true that the boundaries of the State of Louisiana are coextensive with the national boundaries in the said Gulf?

3. To the extent that the Submerged Lands Act (43 U. S. C. 1301) or the Outer Continental Shelf Lands Act (43 U. S. C. 1331) may restrict or limit the boundaries of Louisiana in the Gulf of Mexico, are these Acts constitutional in view of Article IV, Sections 3 and 4 of the Constitution and the 5th, 9th and 10th Amendments thereto?

4. In the alternative, if the Court should find that the State boundaries do not extend to the full limit of the Continental Shelf, then is it not a fact that by reason of the Treaty of Cession, the Act of Admission, and the Submerged Lands Act itself, the state boundaries are three leagues seaward of the Louisiana Coast?

5. Since Louisiana has had physical possession and has exercised exclusive jurisdiction over the Continental Shelf from time immemorial, and such pos-

session and jurisdiction are a basis of title in international law, does not the State have the right to produce oral and documentary evidence as to the nature and extent of such jurisdiction and possession, either as a basis for its claim of ownership to the entire Continental Shelf, or, in the alternative, as evidence to interpret the description of Louisiana's boundaries in the Act of Admission of the State to the Union in 1812?

SUMMARY OF ARGUMENT

1. When this Court decided the cases of *United States v. California*, 332 U.S. 19, *United States v. Louisiana*, 339 *U.S.* 699 and *United States v. Texas*, 339 U.S. 707, it did not have the benefit of a political determination by Congress as to extent of the National and State boundaries in the sea, and as to the ownership of submerged lands and resources therein. Congress has, after these decisions were rendered, stated the national policy on this subject in the Submerged Lands Act (43 U.S.C. 1301) and the Outer Continental Shelf Lands Act (43 U.S.C. 1331), and has approved and adopted, as a rule of property law, the jurisprudence of this Court that the States have always owned the soil under navigable waters, whether inland or not.

2. The theory and effect of the courts' decisions in the three cases above mentioned have been changed and modified to such an extent that a reconsideration of the entire subject as to the relative rights of the State and the federal government in the submerged lands and resources of the Continental Shelf is appropriate and necessary at this time.

3. The Submerged Lands Act did not grant or transfer to the coastal States any title to or ownership of the submerged lands and resources, but recognized and confirmed a title which these States already possessed.

4. The Submerged Lands Act refers to State's historic boundaries. Louisiana's historic boundaries

extend to the 27th parallel of latitude which includes the entire Continental Shelf in the Gulf of Mexico. This was the southern limit of the Louisiana Territory ceded by France to the United States on April 30, 1803, and by virtue of the Treaty of Cession the United States obligated itself to hold this territory in trust for future States to be formed out of this territory.

5. When Congress admitted the State of Louisiana into the Union by Act of April 8, 1812, the United States reserved no part of the submerged lands in the Gulf of Mexico, and such lands passed to the State as an attribute of sovereignty, and in accordance with the obligations assumed by the United States in the Treaty of Cession with France in 1803.

6. The boundaries of the States of the Union and of the United States are coextensive under the American system of dual sovereignty. Since the Outer Continental Shelf Lands Act has declared the national boundary to extend to the edge of the Continental Shelf, Louisiana's boundary in the Gulf of Mexico is coterminous with that of the United States. Within this boundary the United States has no lawful claim of proprietorship and can exercise no powers, and claim no rights except those expressly conferred on it by the Constitution, or necessarily implied in the powers so conferred.

7. Louisiana's claim to the sea-bed, sub-soil and natural resources of the Continental Shelf is in ac-

cord with accepted principles of international law which recognize that exclusive and long continued possession of such submerged lands is a legal and valid basis of title thereto.

The United States can claim no right in international law to exercise federal jurisdiction over the Continental Shelf in the Gulf of Mexico except through, and by virtue of the effective occupation thereof by the State of Louisiana over a long period of time. Such occupation and possession gives to the coastal State ownership and territorial rights in said lands and resources, and justifies an extension of the boundaries of the State and the Nation to include the sub-soil, sea-bed, and natural resources of the Continental Shelf.

8. The United States has not acquired any title to the sea-bed, sub-soil and natural resources of the Continental Shelf by any method enumerated or implied in the Constitution and has no lawful right to dispossess the State of such submerged lands and resources which the State has possessed from time immemorial. To the extent that either the Submerged Lands Act or the Outer Continental Shelf Lands Act permit the federal government to exercise proprietary rights in said area they are violative of Treaty obligations made in Louisiana's behalf in the Treaty of Paris in 1803, which rights of the State are protected by the Fifth and Sixth Amendments to the Constitution. To the extent that said Acts of Congress may limit Louisiana's boundary in the Gulf of Mexico to three miles or

three leagues said Act violates the fifth, sixth, ninth and tenth amendments of the Constitution, and are also in conflict with Article IV section 4 of the Constitution.

9. In the alternative, and only if the Court should deny Louisiana's title and claims set forth above, then Louisiana shows that Act 33 of 1954 of the Legislature of Louisiana correctly designates the States coast line which has been fixed by the Department of Commerce in accordance with Acts of Congress, and which designates and defines "the line dividing the high seas from rivers, harbors and inland waters." (33 U.S.C. 151) Louisiana's boundary extends three leagues seaward from that line under the terms of its Act of Admission in 1812 which fixed the State's boundary in the Gulf of Mexico three leagues from coast.

10. The United States has consistently approved State ownership of a three-league belt in the Gulf of Mexico and has never asserted that the marginal belt in the Gulf was less than three leagues. Since the provisions of the Submerged Lands Act, and other Acts of Congress long prior thereto, recognize the boundaries of Texas and of Florida as extending three leagues into the said Gulf, any contrary interpretation of the Act of Admission of Louisiana would deprive this State of the benefits of the "equal footing" clause of the Constitution.

11. At the time when Louisiana was admitted to the Union in 1812, and long prior thereto, the United

States had always contended that its marginal belt and territorial waters extended at least three leagues off-shore, and it was not the intention of Congress in the Act of Admission to limit Louisiana to a smaller area. The United States has never asserted or assented to a marginal belt less than three leagues distance off-shore in the Gulf of Mexico.

12. Louisana since her admission to the Union has at all times, and with the acquiescence of the United States, exercised governmental and proprietary rights in the Continental Shelf. Such possession gives to the State a title by prescription and gives rise to a conclusive presumption of title to the Continental Shelf. In the alternative these facts of possession and exercise of jurisdiction afford evidence of a contemporary interpretation by the State and the nation that the boundaries of Louisiana described in its Act of Admission extended three leagues from coast in the Gulf of Mexico.

ARGUMENT

A. THE COASTAL STATES HAVE TITLE TO THE CONTINENTAL SHELF SUBJECT TO CONSTITUTIONAL POWERS OF THE UNITED STATES. THE PARAMOUNT RIGHTS OF THE LATTER CONFER ON IT NO TITLE OR OWNERSHIP.

1. Plaintiffs Position Is Based On Jurisprudence Which No Longer Applies to the Issues Involved in This Action.

The claim advanced by the Attorney General on behalf of the United States to all that portion of the Continental Shelf lying more than three miles seaward from the shores of Louisiana in the Gulf of Mexico is based upon the three decisions of this Court in the California, Louisiana and Texas Tidelands cases[1] and, paradoxically enough, on two acts of Congress that were passed after these three decisions were rendered, namely; the Submerged Lands Act of May 22, 1953 and the Outer Continental Shelf Lands Act of

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[1]United States v. California, 332 U.S. 19, 67 S.Ct. 1658, 91 L.Ed. 1889;

United States v. Louisiana, 339 U.S. 699, 70 S.Ct. 914, 94 L.Ed. 1216;

United States v. Texas, 339 U.S. 707, 70 S.Ct. 918, 94 L.Ed. 1221.

August 7, 1953[2], which acts made a political determination and established a rule of property law which modifies the theory and changes the effect of those decisions.[3]

It appears to be the Attorney General's position that the State of Louisiana has never had the ownership of the submerged lands along its shores in the Gulf of Mexico, and these lands never belonged to the states. This Court did not hold that the lands "belong" to the United States but held only that the United States had "paramount rights". The Court then allowed "imperium" to confer the benefits of "dominion" but did not hold these concepts to be equivalents. This makes all the more incongruous the statement of the Attorney General in Paragraph IV of the Compliant that the United States *granted* the title to and ownership of these submerged lands on May 22, 1953 when Congress enacted the Submerged Lands Act, for if the United States lacked title, it had nothing to grant.

We distinguish between the Attorney General and the United States because it will be found that in the declaration of the territorial extent of the United States, the word of Congress must be accepted, and that word is greatly at variance with the present contentions of the present Attorney General.

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[2]67 Stat. 29, 43 U.S.C. 1301,
67 Stat. 462, 43 U.S.C. 1331.
[3]Superior Oil Co. v. Fontenot, 213 F.2d 565, 569,
Cert. Den. 348 U.S. 837, 99 L.Ed. 660.

2. Political Determination of National Boundary Made By Acts of Congress in 1953 Modify Effect of Recent Decisions of This Court.

When the United States and the State of California contested the right to take oil from submerged lands off the California coast, this Court did not undertake to pass upon the matter of title. The Court was then without the benefit of a declaration by Congress as to the extent of American territorial jurisdiction. As that is a political and not a juridical question, the Court did not then seek to supply the answer to it but chose rather to consider that a claim to the area might present problems international in character, and that in such an area the powers of the federal government were paramount and exclusive.

The decision in the California case was followed without deviation in theory or result in the Louisiana and Texas cases.

Since these three decisions were rendered Congress has declared the extent of American territorial jurisdiction. No longer are we concerned with the international arena or of the comparison of power or rights of the United States with those of an individual state in such an arena. The issue is now purely one of title.

The Attorney General of the United States recognizes that. He treats this as an action to fix boundary. Such an action between proprietors presupposes

separate but adjoining ownerships. The action suggests that Louisiana owns a certain distance into the Gulf of Mexico, three miles or three leagues or some other distance, and measured from the coast line or from the shore line—but that beyond that measure lies federal territory out to the edge of the continental shelf.

Louisiana's position is plain;

1. The seaward boundaries of our state are coextensive with the seaward boundaries of the nation. There is not any federally owned belt of submerged land seaward of the state owned submerged land. While the Congress alone can declare the extent of American territory, and has done so, the "ownership" of that territory as distinguished from "imperium" respecting it, necessarily is vested in the States pursuant to our constitutional system.

2. Alternatively, and only if the Court should hold that Congress can legally appropriate for the federal government a belt of land seaward of the submerged land belonging to and occupied by the States, Louisiana claims that its historic boundaries within the meaning of Congressional Acts extend seaward three leagues and not just three miles from its coast.

3. If a state limit is set short of the limit of national territory, the measurement determining the state limit necessarily commences from the coastline (not the shore line) and the coastline has been de-

clared by Congress to be where inland waters meet the open sea.

The claim of the Attorney General on behalf of the United States is based on the odd position that Louisiana has never had the ownership of the submerged lands along its shores in the Gulf of Mexico. His position is utterly untenable. He cannot rely upon the three previous cases because they did not involve title as the present case does. He cannot rely upon the Submerged Lands Act because it specifically recognizes and confirms the title of Louisiana to the submerged lands extending at least three miles seaward from its *coastline*. And he cannot validly say that such was an initial grant by Congress for two specific reasons:

(a) Congress itself called its action one of restitution and not of grant, and

(b) Even more important, Congress recognized the right of the State to three leagues, not three miles, if the State could show that its historic boundaries extended so far, a present recognition of a previously existing title.

We are not the first to note the great change in the problem resulting from the enactment of the Submerged Lands Act, and when the Congress asserted in the Outer Continental Shelf Lands Act that the submerged lands to the edge of the outer continental shelf appertained to the United States, so far as Louisiana, the Attorney General and this Court are con-

cerned, those lands necessarily became American territory subject to the same rules of public and private ownership which are applicable to the rivers, lakes, bays, inland seas which are within and around our part of the continent and subject to the same rules which are applicable to the land itself. The Fifth Circuit Court recognized this in *The Superior Oil Company v. Fontenot*, 213 F. 2d 565, Cert. Den. 348 U.S. 837, 99 L.Ed. 660.

Moreover, when Alabama attacked the Submerged Lands Act, this Court rejected the attack in recognition of the power of Congress to declare the extent of American territorial jurisdiction and, to confirm to Louisiana its title to the submerged lands[4].

We are not unaware of what at first blush may seem to some to be an inconsistency in Louisiana's position. For we firmly assert that the Submerged Lands Act and the Outer Continental Shelf Lands Act firmly and finally settle favorably to Louisiana that all of the area under consideration in this case is American territory, while we object to the maximum limits set for Louisiana in those very acts. We urge, however, that the two concepts are different.

1. That Congress may, consistent with constitutional limitations, declare the territorial limits of the United States without question from State or Court is acknowledged.

2. That Congress can carve out this area a

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[4]347 U.S. 272, 74 S.Ct. 481, 98 L.Ed. 698.

federally **owned** belt from which the states are excluded, is denied.

This second point has not been dealt with in any of the tideland cases thus far. But this Court is not without precedents of its own, all favorable to Louisiana, on this point.

Everyone must concede that when in ratifying our Constitution the states surrendered to the federal government the right to raise and support armies and navies and to make war and peace, the states left the family of nations and the union became a member thereof. But this did not involve the surrender of *ownership* of a square inch of land, whether or not covered by water, to which the original thirteen states had claim, and, as will be shown, other states entering the Union were accorded equal rights to those of the original states.

3. The Submerged Lands Act Nullified the Theory of National Dominion Over a Marginal Belt of Submerged Lands.

When the three "Tidelands Cases" were decided by this Court in 1947 and 1950 Congress had made no declaration of national policy or determination as to the ownership of submerged lands lying seaward of the coastal States. However Congress did make such a determination in the Submerged Lands Act, and such a determination must, of necessity, replace any contrary ruling of the Courts since Article IV

Sec. 2, Cl. 2 of the Constitution gives to Congress the power to "make all needful Rules and Regulations respecting the Territory or other property belonging to the United States"—but without prejudice to any claims of any particular state. The theory of the Tidelands Cases that "paramount rights" of the United States in the marginal belt can be translated into federal ownership conflicts with the subsequent Acts of Congress. Therefore the latter must control the decision of the case at bar.

This Court in *U. S. v. Louisiana*, 339 U. S. 699, 704, 94 L.Ed. 1216, 1219, stated the theory on which the California and Texas cases on the same subject, were decided, as follows:

> ". . . The marginal sea is a national, not a state concern. National interests, national responsibilities, national concerns are involved. The problems of commerce, national defense, relations with other powers, war and peace focus there. National rights must therefore be paramount in that area.
>
> That is the rationale of United States vs. California . . . "

The foregoing decision in the Louisiana case became the basis of a suit to recover State severance taxes exacted by Louisiana for the period between June 5, 1950—the date of the decision—and May 22, 1953—the date of the Submerged Lands Act (Public Law No. 31). In upholding the right of the State to collect these taxes the Fifth Circuit Court of Appeals in the Case of *The Superior Oil Co. v. Fontenot*, 213 F. 2d 565, 569, said:

"So here, when the long and heated struggle

> over the title and right to possession of the land, which had been waged between the government and the state, came to an end in Public Law 31, the state and appellants, as its lessees, found themselves in one of two positions equally favorable in law. By virtue of the act which nullified the theory on which the opinion and decree of the Supreme Court had been based, they must be held, notwithstanding the opinion of the Supreme Court to have always and at all times had the title and right of possession, or, if the passage of Public Law 31, which brought the long struggle to an end, is to be regarded as then conferring title on them, this title, by the very terms of the Act declaring and establishing it, related back so as to confirm and maintain the possession and title of State and lessee as good from the beginning."

In the foregoing case plaintiff and Appellant filed a petition for writs of certiorari in the Supreme Court of the United States but the Court denied the writs in a memorandum decision reported in 348 U.S. 837, 99 L. Ed. 660. It may therefore be inferred that the Supreme Court did not disagree with the foregoing statement made by Judge Hutcheson that the Submerged Lands Act nullified the theory on which the California case and other tidelands cases were decided.

This Court in *Helvering v. Griffiths*, 318 U.S. 371, 400, 401, 87 L.Ed. 843, 862 makes the following comment regarding its duties to re-examine its previous judgments when Congress has enacted legislation conflicting therewith:

> ". . . There is no reason to doubt that this Court may fall into error as may other branches of the Government. Nothing in the history or at-

titude of this Court should give rise to legislative embarrassment if in the performance of its duty a legislative body feels impelled to enact laws which may require the Court to re-examine its previous judgments or doctrine."

The statement of Judge Hutcheson in The Superior Oil Company case is supported by the language of the Submerged Lands Act, and by the Legislative history of that Act. Section 3 of the Act provides (43 U.S.C. 1311):

> "(a) It is determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective states, and the natural resources within such lands and waters **** be, and they are, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective grantees, lessees, or successors in interest thereof;
>
> (b) (1) The United States releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title and interest of the United States, *if any it has*, in and to all said lands, improvements, and natural resources; ****" (Emphasis supplied)

The legislative history of the Submerged Lands Act appears in House Report No. 215 and Senate Report No. 133 of the 83rd Congress, 1st Session, excerpts from same appearing at length in Defendant's Appendix A. We wish to emphasize this legislative history because Congress in adopting the Submerged Lands Act has restated a rule of property law long

established by the jurisprudence of this Court.

House Report No. 215 makes the following statement on page 34 regarding the unchallenged ownership of the States of the Union during the 160 years of the Nation's history:

"One Hundred And Sixty Years of Unchallenged Ownership by the States.

> Throughout our Nation's history the States have been in possession of and exercising all the rights and attributes of ownership in the lands and resources beneath the navigable waters within their boundaries. During a period of more than 150 years of American jurisprudence the Supreme Court, in the words of Mr. Justice Black, had 'used language strong enough to indicate that the Court then believed that the States also owned territorial jurisdiction, whether inland or not.'
>
> That same belief was expressed in scores of Supreme Court opinions and in hundreds of lower Federal courts' and State courts' opinions. Similar beliefs were expressed in rulings by Attorneys General of the United States, the Department of the Interior, the War Department, and the Navy Department. Lawyers, legal publicists, and those holding under State authority accepted this principle as the well-settled law of the land. * * * "

The House Report after discussing the decision in the *California case* then makes the following statement on page 46:

> "The repeated assertions by our highest Court for a period of more than a century of the doctrine of State ownership of all navigable waters, whether inland or not, and the universal

> belief that such was the settled law, have for all practical purposes established a principle which the committee believes should as a matter of policy be recognized and confirmed by Congress as a rule of property law."

With respect to the claim that the enactment of the Submerged Lands Act would constitute a gift of property belonging to the United States to the coastal states, the Congressional Committee says: (page 47)

> " * * * The committee cannot agree that the relinquishment by the Federal Government of something it never believed it had, and the confirmation of rights in the States which they always believed they did have and which they have always exercised, can be properly classified as a 'gift,' but rather a mere confirmation of titles asserted under what was long believed and accepted to be the law. * * * "

Senate Report No. 133 makes similar statements which need not be repeated here. See Defendant's Appendix A for an enlargement of this committee report. However, attention may be directed to the following criticism by the Senate Committee of the Court's holding in the *California Case* that the obligation of the United States to defend the marginal seas from foreign attack gives it paramount rights other than ownership over the submerged lands adjoining our shores. Answering this statement the Senate Committee said: (Page 58-59)

> "If the Court in making the statement had reference to the military power of a foreign nation to dispute the rights of the States to take oil under submerged lands within their boundaries, then the same statement could correctly be made about oil

under uplands, providing of course, the foreign nation possessed a military force strong enough to compel a settlement by the United States. *However if the statement was made because the Congress had never legislatively asserted on behalf of the United States or the State's title to the submerged lands within their boundaries, then we think that is all the more reason why the Congress should now remove all doubt about the title by ratifying and confirming the titles long asserted by the various States, subject always, of course, to the paramount powers of the Federal Government under the Constitution, which titles have never been disputed by any foreign nation. (emphasis supplied)* * * * *

* * * It is beyond doubt that the Federal Government cannot assert any lawful control over lands or resources that are not located within the borders of the several States or the Territories, or which has not been committed to it by treaty or other international negotiations."

In *Massachusetts v. Manchester*, 139 U. S. 240, the Supreme Court said:

"'There is no belt of land under the sea adjacent to the coast which is the property of the United States and not the property of the States."

The foregoing statement is an endorsement by the Congress of Mr. Justice Reed's dissent in the California case, wherein he said: (332 US 42-3)

"This ownership in California would not interfere in any way with the needs or rights of the United States in war or peace. The power of the United States is plenary over these undersea lands

precisely as it is over every river, farm, mine, and factory of the nation. While no square ruling of this Court has determined the ownership of those marginal lands, to me the tone of the decisions dealing with similar problems indicates that, without discussion, state ownership has been assumed. Pollard v. Hagan, 3 How (US) 212, 11 L.Ed. 565, supra; Louisiana v. Mississippi, 202 US 1, 52, 50 L.Ed. 913, 931, 26 S. Ct. 408, 571; The Abby Dodge, 223 US 166, 56 L.Ed. 390, 32 S. Ct. 310; New Jersey v. Delaware, 291 US 361, 78 L.Ed. 847, 54 S. Ct. 407; 295 US 694, 79 L.Ed. 1659, 55 S. Ct. 907."

It also constitutes approval of Mr. Justice Frankfurter's answer to the question of title (332 U.S. 43):

" * * * Of course the United States has 'paramount rights' in the sea belt of California—the rights that are implied by the power to regulate interstate and foreign commerce, the power of condemnation, the treaty-making power, the war power. We have not now before us the validity of the exercise of any of these paramount rights. Rights of ownership are here asserted—and rights of ownership are something else. Ownership implies acquisition in the various ways in which land is acquired—by conquest, by discovery and claim, by cession, by prescription, by purchase, by condemnation. When and how did the United States acquire this land?

To declare that the Government has 'national dominion' is merely a way of saying that vis-a-vis all other nations the Government is the sovereign.

If that is what the Court's decree means, it needs no pronouncement by this Court to confer or declare such sovereignty. If it means more than that, it implies that the Government has some proprietary interest. That has not been remotely established except by sliding from absence of ownership by California to ownership by the United States."

The following statements of Senate Joint Resolution No. 13, which became the Submerged Lands Act, regarding the purpose of the bill and the effect of its enactment are quoted. The purpose of the bill is thus stated on page 5 of the Senate Report:

"*Purpose of Bill*

Senate Joint Resolution 13, as amended, determines and declares that it is in the public interest that title and ownership of lands beneath navigable waters within the boundaries of the respective States, and of the resources therein, be established and vested in the respective States. Insofar as the Federal Government has any proprietary rights in such lands and waters, that interest is relinquished or 'quitclaimed' to the individual States. * * * "

The conclusion of the Senate Committee is stated on page 24:

"*IX Conclusion*

The committee submits that the enactment of Senate Joint Resolution 13, as amended, is an act of simple justice to each of the 48 states in that it re-establishes in them as a matter of law that

> possession and control of the lands beneath navigable waters inside their boundaries which have existed in fact since the beginning of our Nation. It is not a gift; it is a restitution. By this joint resolution the Federal Government is itself doing the equity it expects of its citizens.
>
> The committee recommends enactment of Senate Joint Resolution 13."

The actions of Congress outlined above very strongly suggest that the Court should reaffirm "as a rule of property law" its repeated assertions "for a period of more than a century of the doctrine of State ownership of all navigable waters, whether inland or not." It should, by the same token, renounce the theory that national responsibility or national interest in the submerged lands and territorial waters adjoining our nation's shores gives to the federal government any title to or ownership of such lands and waters. The conclusion to be reached from the Submerged Lands Act and its legislative history is that external national sovereignty pertains only to matters of national defense, interstate and foreign commerce, and other international relationships. It would therefore follow that the jurisprudence of 160 years establishing these principles should be applied to the case at bar. In the light of this jurisprudence Congress has correctly declared that submerged lands belong to and are a part of the individual coastal state which they adjoin. As will be hereinafter shown the Submerged Lands Act, and the Outer Continental Shelf Lands Act, insofar as they recognize exclusive national ownership of the

Outer Continental Shelf, and insofar as they would limit the States' boundaries to three miles or three leagues, are unconstitutional and should be considered as not written.

4. The States Have Always Owned Territorial Waters And Submerged Lands Adjoining Their Shores.

Prior to the Revolutionary War the King of England held the title and dominion over the thirteen American Colonies and the seas adjoining their shores. The Supreme Court has repeatedly held that these colonies succeeded to all of the rights of the Crown when they gained their independence and thereby became the owners of such lands and waters subject only to the rights surrendered to the National Government by the Constitution of the United States. States subsequently admitted to the Union came in on the same footing. This Court has never held that the federal government ever succeeded to the rights of the Crown or that it ever acquired ownership of territorial waters and submerged lands from the English King, or by cession from the individual States, or even from the Constitution of the United States.

The source of the title of the coastal states of the Union is set out in detail in quite a number of early cases which are reviewed in *Shively v. Bowlby*, 152 U. S. 1, 14-15, 26-27, 38 L.Ed. 331, 336-7, 341. The following excerpts from that opinion are pertinent:

> "The English possessions in America were claimed by subjects of the King of England, and

> covered by subjects of the King of England, and taken possession of in his name, by his authority or with his assent, they were held by the King as the representative of and in trust for the nation; and all vacant lands, and the exclusive power to grant them, were vested in him. * * And upon the American Revolution all the rights of the Crown and of Parliament vested in the several states, subject to the rights surrendered to the national government by the Constitution of the United States. Johnson v. McIntosh, 21 US 8 Wheat, 543, 595 (5:681, 694); Martin v. Waddell, 41 US 16 Pet. 367, 408-410, 414 (10:997, 1012-14); Com. v. Roxbury, 9 Gray, 451, 478-481; Stevens v. Paterson & N. R. Co., 34 N. J. 532, 3 Am. Rep. 269; People v. New York & S. I. Ferry Co. 68 N. Y. 71. * *"

The Court then goes on to say (152 U. S. 26-27):

> "The new states admitted into the Union since the adoption of the Constitution have the same rights as the original states in the tide waters, and in the lands below the high water mark, within their respective jurisdictions.* *
>
> In Pollard v. Hagan (1844) this Court upon full consideration adjudged that upon the admission of the State of Alabama into the Union the title in the lands below high water mark of navigable waters passed to the state, and could not afterwards be granted away by the Congress of the United States. Mr. Justice McKinley, delivering the opinion of the court (Mr. Justice Catron dissenting) said: 'We think a proper examination of this subject will show that the United States

never held any municipal sovereignty, jurisdiction, or right of soil, in and to the territory of which Alabama or any of the new states were formed; except for temporary purposes, and to execute the trusts created by the acts of the Virginia and Georgia legislatures, and the deeds of cession executed by them to the United States, *and the trust created by the treaty with the French Republic of the 30th of April, 1803, ceding Louisiana.*'

"When the United States accepted the cession of the territory, they took upon themselves the trust to hold the municipal eminent domain for the new states, and to invest them with it to the same extent, in all respects, that it was held by the states ceding the territories.' 44 U. S., 3 How. 221-3, (11:579-1)." (Emphasis supplied)

The earlier case of *Harcourt v. Gaillard*, (1827) 12 Wheat. 524, 6 L.Ed. 716 refutes the idea that the United States when the Union was formed became possessed of any property whatever except through one of the original states. The Court in that case said:

"There was no territory within the United States that was claimed in any other right than that of some one of the confederate states; therefore, there could be no acquisition of territory made by the United States distinct from, or independent of some one of the states.[5]

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[5]See also: Report No. 133, 83rd Cong. 1st Sess. 1953 p. 58-9 Commonwealth v. Manchester, 152 Mass. 230, 25 N.E. 116, aff'd Manchester v. Mass. 139 U.S. 240, 35 L.Ed. 159 Brown v. Grant, 116 U.S. 207, 212, 29 L.Ed. 598.

> We are, then, referred to the belligerent rights of South Carolina and Georgia; and it is immaterial to the question here, to which of those states the territory appertained. Each declared itself sovereign and independent, according to the limits of its 31st parallel of north latitude.
>
> This limit was claimed and asserted by both of those states in the declaration of independence, and the right to it was established by the most solemn of all international acts—the treaty of peace. It has never been admitted by the United States, that they acquired anything by way of cession from Great Britain by that treaty."

Not only did the federal government acquire nothing in the way of property from the English Crown, but the Constitution gave it no right to acquire any territory to be held and governed permanently as such. The Supreme Court has accordingly said that the national government cannot enlarge its territorial limits bordering the United States in any way except by the admission of new states. Thus in *Dred Scott v. Sanford*, 19 How. 393, 446-8, 15 L.Ed. 691, 718:

> " * * * There is certainly no power given by the Constitution to the Federal Government to establish or maintain colonies bordering on the United States or at a distance, to be ruled and governed at its own pleasure; nor to enlarge its territorial limits in any way, except by the admission of new states. * * * No power is given to

acquire a territory to be held and governed permanently in that character. * * *

We do not mean, however, to question the power of Congress in this respect. The power to expand the territory of the United States by the admission of new States is plainly given; and in the construction of this power by all the departments of the government, it has been held to authorize the acquisition of territory, not fit for admission at the time, but to be admitted as soon as its population and situation would entitle it to admission. It is acquired to become a State, and not to be held as a colony and governed by Congress with absolute authority; and as the propriety of admitting a new State is committed to the sound discretion of Congress, the power to acquire territory for that purpose, to be held by the United States until it is in a suitable condition to become a state upon an equal footing with the other States, must rest upon the same discretion. * * *

* * * The principle upon which our governments rest, and upon which alone they continue to exist, is the union of States, sovereign, and independent within their own limits in their international and domestic concerns, and bound together as one people by a general government, possessing certain enumerated and restricted powers, delegated to it by the people of the several States, and exercising supreme authority within the scope of the powers granted to it, throughout the dominion of the United States. A power, therefore, in the general government to obtain and hold colonies and dependent territories, over which

> they might legislate without restriction, would be inconsistent with its own existence in its present form. Whatever it acquires, it acquires for the benefit of the people of the several States who created it. It is their trustee acting for them, and charged with the duty of promoting the interests of the whole people of the Union in the exercise of the powers specifically granted. * * *"

The principles of law set forth in these cases are in accord with the dissenting opinions in the California, Texas and Louisiana cases. Since Congress has supplied the lack of a declaration of territory, and thus made the issue only one of property or title, and not a question of power, these dissenting opinions are now authoritative precedents along with the earlier cases which are cited and quoted herein. *Pollard v. Hagan*, 3 How. (US) 212; *Weber v. Harbor Commissioners*, 18 Wall. (US) 57; *Shively v. Bowlby*, 152 U. S. 1; *Manchester v. Massachusetts*, 139 U. S. 240, and other cases cited in this brief, enunciate principles which apply equally to rivers, bays, tidelands and coastal submerged lands under the sea, and correctly state the law of the land at this time.

"See Senate Report 133, 83rd Cong. 1st Sess. 1953, p. 58-9

B. LOUISIANA HAS TITLE TO THE CONTINENTAL SHELF

1. The President's Proclamation Effectively Supports Louisiana's Claim

Louisiana's claim to the entire Continental Shelf is supported by the Continental Shelf Proclamation No. 2667 issued by President Truman on September 28, 1945, (10 FR 12303) in which he asserted the jurisdiction of the United States over the natural resources of the Continental Shelf under the high seas and contiguous to the coasts of the United States and its territories. In this Proclamation the President stated that "the Continental Shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it." He further stated that the effectiveness of measures to utilize or conserve the minerals and other natural resources on and under the Continental Shelf would be contingent upon cooperation and protection from the shore" and that "since these resources frequently form a seaward extension of a pool or deposit lying within the territory" of the nation "self protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources." This Proclamation also states that "the Government of the United States regards the natural resources of the subsoil and sea-bed of the Continental Shelf beneath the high seas but continguous to the coasts of the United States as appertaining to the

United States, subject to its jurisdiction and control."

The entirety of the Proclamation appears in Defendants Appendix A.

This Proclamation of the President was given legislative sanction by the Congress in 1953 by passage of the Outer Continental Shelf Lands Act. This Act is valid and legal insofar as it declares the location of the National Boundaries to be the edge of the Continental Shelf, and confers jurisdiction on the federal government within its constitutional powers governing national defense, interstate and foreign commerce, and navigation. These latter provisions are separate from and independent of the provisions of the act which unconstitutionally seek to establish a federally owned belt of land. Section 17 of the Act makes all of its provisions severable.

2. The Boundaries of the States Are Coextensive With Those of the United States.

Since this Court has always held that the boundaries of the States are co-extensive with those of the United States, that the United States does not and cannot hold property as a monarch may for private or personal purposes, and that territories acquired by the United States are held in trust for the States to be formed out of such territories, it would follow that an extension of the boundaries of the United States into the sea would carry with it an extension of the boundaries of the adjoining State. Therefore, the Presidential Proclamation which declared that the subsoil

of the Gulf of Mexico was a mere extension of the land-mass of the coastal state, and the acts of Congress to the same purpose, would have the effect of declaring that the boundaries of the State of Louisiana extended to the limit of the Continental Shelf.

In *Commonwealth v. Manchester*, 152 Mass. 230, 241, 25 N.E. 113, 116, 9 L.R.A. 236, affirmed 139 U. S. 240, 35 L. Ed. 159, Mr. Justice Holmes stated the opinion of the Supreme Judicial Court of Massachusetts:

> "There is no belt of land under the sea adjacent to the Coast which is the property of the United States and not the property of the States."

In Senate Report No. 133, page 59, the Congressional Committee states:

> "It is beyond doubt that the Federal Government cannot assert any lawful control over lands and resources that are not located within the borders of the several states or the Territories, or which has not been committed to it by treaty or other international negotiations."

The Court pointedly stated that the United States cannot maintain at its pleasure territory bordering that of the several states in *Dred Scott v. Sanford*, 19 How. 393, 446, 15 L.Ed. 691, 718:

> "There is certainly no power given to the Federal Government to establish or maintain colonies bordering on the United States—to be governed or ruled at its pleasure."[7].

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[7]See Also:
Harcourt v. Gaillard, 12 Wheat 523, 6 L.Ed. 71[illegible]
Brown v. Grant, 116 U.S. 207, 29 L.Ed. 598
Commonwealth v. Manchester, 152 Mass. 230, 25 N.E. 113, 116, affirmed 139 U.S. 240, 35 L.Ed. 159.

Plaintiff's counsel states that the boundary of Louisiana extends no further than the national boundary, but says the latter extends only three miles from the coast of Louisiana.[8] If this be true then the United States proposes to exploit lands, and take all minerals and natural resources from lands to which it has no title or right of possession or control. But the right to use and claim the fruits of ownership implies, of necessity, some sort of title, and when applied to realty such right or title is limited to boundaries which are particularly described.

The Outer Continental Shelf Lands Act particularly describes the Outer Continental Shelf and in Section 3 declares that the subsoil and seabed of the Outer Continental Shelf "appertain to the United States and are subject to its jurisdiction, control, and the power of disposition" (43 U.S.C. 1332).

Section 4 of the Act declares that "the Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the Outer Continental Shelf". This same section gives to United States District Courts original jurisdiction over this area, and provides that the Longshoremen's and Harbor Workers Compensation Act and the National Labor Relations Act shall be effective in this territory. The head of the Department in which the Coast Guard is operating is granted authority to make regulations for the promotion of safety of life and property and the Secretary of the Army is granted the power to prevent obstruction to navigation. The

[8]Statement with Respect to Motion for Judgment p. 3-4. Memorandum for the United States in Opposition to Motion by the State of Louisiana to Take Depositions p. 2.

Secretary of Interior is granted authority to execute mineral leases under the Act.

The powers of jurisdiction, control and disposition referred to above could hardly be exercised in territory which was not included within the boundaries of the United States. It would be pertinent to ask whether or not the United States would permit a Lessee from the Republic of Mexico or from one of the South American Republics to enter this area and develop it for mineral purposes, and on what basis the United States would claim its exclusive right to the natural resources of the Continental Shelf? Unless the Federal Government can assert that this territory belongs to the coastal State and is a part of the United States it would have no basis to resist the trespass of a foreign lessee. This Court has always held that jurisdiction, territory and ownership are co-extensive.[9]

[9]New York v. Connecticut, 4 Dall. 4, note (b), (1799), 1 L.Ed. 715

United States v. Bevans, 3 Wheat 336, 385, 388 (1818), 4 L.Ed. 404, 416

Rhode Island v. Massachusetts, 12 Pet. 657, 733 (1838), 9 L.Ed. 1233, 1264

Martin v. Waddell, 16 Pet. 367, 411-12 (1842), 10 L.Ed. 997, 1013

Pollard's Lessee v. Hagan, 3 How. 212, 228 (1845), 11 L.Ed. 565

Smith v. Maryland, 18 How. 71, 74 (1855), 15 L.Ed. 269, 271

McCready v. Virginia, 94 U.S. 391, 394 (1876), 24 L. Ed. 248

Manchester v. Massachusetts, 139 U.S. 240, 261, 263-4, 35 L.Ed. 159

There is no legal and factual basis for Government Counsel's assertion that the boundaries of the United States extend only three miles offshore into the Gulf of Mexico, nor is there any basis for his assertion that the boundaries of Louisiana are limited to that extent.

3. Louisiana's Effective Occupation and Long Possession of the Continental Shelf Is a Basis of Its Title

The basis of any claim in International law to possession and control of the Continental Shelf rests on effective occupation with the acquiescence of the family of nations, and such possession and occupation ripens with the passage of time into a *title of ownership*. The sea-bed, sub-soil and resources then become a part of the territory of the coastal State.

Westlake in his work on International Law, Part 1, Page 190-191 states:

> "The case of the pearl fishery is peculiar, the pearls being obtained from the sea-bottom by divers, so that it has a physical connection with the stable element of the locality which is wanting to the pursuit of fish swimming in the water. When carried on under state protection, as that off the British Island of Ceylon, or that in the Persian Gulf which is protected by British ships in pursuance of treaties with certain chiefs of the Arabian mainland, it may be regarded as an occupation of the bed of the sea. In that character the pearl fishery will be territorial even though the shallowness of the water may allow

it to be practised beyond the limit which the state in question generally fixes for the littoral sea . . . and the territorial nature of the industry will carry with it, as being necessary for its protection, the territorial character of the sea at the spot".

To the same effect are:

Sir Cecil Hurst, "*Whose is the Bed of the Sea?*", *British Year Book of International Law*, 1923-1924.

Mouton, "*The Continental Shelf*," p. 306-7.

Colombos, "*International Law of the Sea*," 3rd Ed. p. 306-7.

Vattel's "*Law of Nations*" (Chitty Ed) p. 127.

Hackworth's "*Digest of International Law*," Vol. II, p. 674-679.

A clear statement of International law on this subject is contained in *Hackworth's Digest of International Law*, Vol. II, page 674-675, as follows:

> " . . . Wherever it can be shown that particular oyster beds, pearl banks, chank fisheries, sponge fisheries or whatever may be the particular form of sedentary fishery in question outside the three-mile limit have always been kept in occupation by the Sovereign of the adjacent land, ownership of the soil of the bed of the sea where the fishery was situated may be presumed, and th exclusive right to the produce to be obtained from these fisheries may be based on their being a produce of the soil. Ownership of the soil by the Sovereign of the country under such circum-

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> stances must carry with it the right to legislate for the soil so owned and for the protection of the wealth to be derived from it, and no doubt need be felt as to the binding force of the various enactments which have been issued for the protection of these sedentary fisheries outside the three-mile limit. . . .
>
> The maintenance of a State's property rights in special areas outside the three-mile limit when more extensive general claims to sovereignty, jurisdiction and property were abandoned is in no way inconsistent with the principles laid down by Oppenheim, that the sub-soil beneath the bed of the open sea outside the marginal belt of territorial waters is a no man's land, property in which can be acquired on the part of the littoral State through occupation starting from the sub-soil beneath the bed of the territorial maritime belt. Tunnelling in the sub-soil for purposes of mining or communications seems to be the only aspect of the problem which Oppenheim had in mind, but the principles he lays down are in no way inconsistent with the recognition of a right of exclusive ownership arising from long and undisputed occupation of sedentary fisheries lying on the surface of the bed of the sea."

Quotations from the works of the aforementioned and other authors are set forth in greater detail in Defendants Appendix B.

Louisiana's long possession of the sub-soil and sea-bed in the Gulf of Mexico far beyond three-miles offshore is a basis of Louisiana title, and this effective occupation of the sea-bed by the State is the only

basis in international law whereby the United States may exercise its Federal jurisdiction over this area. The United States can only claim its rights through the State of Louisiana, and the property on which Federal jurisdiction is claimed is property which it acquired from France to be held in trust for the State. The claim of the State ownership, and the assertion of Federal jurisdiction by the United States are in effect a claim to territory, and the boundaries of the State and the nation must of necessity include such territory.

Territories acquired by the United States by treaty or cession must be held in trust by it for the States to be thereafter formed out of such territories, particularly where there is an express obligation to that effect. Among the decisions of the Court on this subject is the case of *Weber v. Harbor Commissioners*, (1873) 18 Wall. (85 U.S.) 57, 65, 21 L.Ed. 798, 802:

> "* * * Although the title to the soil under the tide waters of the bay was acquired by the United States by cession from Mexico, equally with the title to the upland, they held it only in trust for the future state. Upon the admission of California into the Union upon equal footing with the original states, absolute property in and dominion and sovereignty over all soils under the tide-waters within her limits passed to the state, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, subject only to the paramount right of navigation over the waters, so far as such navigation might be required by the necessities

of commerce with foreign nations or among the several states the regulation of which was vested in the general government. *Pollard v. Hagen*, 3 How. 212; *Mumford v. Wardwell*, 6 Wall. 436, 18 L.Ed. 761."

See Also:

Shively v. Bowlby, 152 U.S. 1, 38 L.Ed. 331

Knight v. United Land Assn., 142 U.S. 161, 35 L.Ed. 974

Pollard v. Hagan, 3 How. 212, 11 L.Ed. 565

Borax Consolidated v. Los Angeles, 296 U.S. 10, 56 S. Ct. 23, 80 L.Ed. 9

Van Brocklin v. Anderson, 117 U.S. 151, 158, 29 L.Ed. 845, 847, makes the statement:

"The United States do not and cannot hold property, as a monarch may, for private or personal purposes."

The coastal states of the Union have the right to define their boundaries into the sea to the limit permitted by international law and co-extensive with the boundaries of the Federal Government, and within such boundaries the principle of dual sovereignty is applied just as it is anywhere else in the domain of the state. Thus the Court held in *Manchester v. Commonwealth of Massachusetts*, (1890) 139 U.S. 240, 264, 35 L.Ed. 159, 166:

"The extent of the territorial jurisdiction of

> Massachusetts over the sea adjacent to its coast is that of an independent nation; and, except so far as any right of control over this territory has been granted to the United States, this control remains with the State. * * * Within what are generally recognized as the territorial limits of States by the law of nations, a State can define its boundaries on the sea and the boundaries of its counties * * * * *"

The only conclusion to be drawn from the foregoing authorities is that Louisiana's boundaries are at the edge of the Continental Shelf where the United States has declared the national boundary to be; that the United States within these boundaries can only exercise the powers conferred on it by the Constitution; and that anything provided to the contrary in the Submerged Lands Act and the Outer Continental Shelf Lands Act is illegal and unconstitutional.

C. THE SUBMERGED LANDS ACT AND THE OUTER CONTINENTAL SHELF LANDS ACT ARE VALID PROVIDED THEY DO NOT VIOLATE FUNDAMENTAL LAW AND TREATIES.

1. Congress May Not Extend the National Boundary Without Extending State Boundaries Co-Extensively.

Although Congress has the right to extend the boundaries of the nation seaward to the full limit permitted by international law, such an extension of

boundaries can in no way deny that the boundaries of the states are the same as those of the nation.[10] Nor is there any reason why the dual sovereignty principle inherent in our republican form of government and guaranteed by the Constitution, should not apply to the area in the sea thus included in the boundaries of the United States and the individual coastal states. Such an extension of the national and the state domains must in any event be made in accordance with treaty obligations and must follow constitutional limitations. Accordingly the Submerged Lands Act and the Outer Continental Shelf Lands Act are valid only insofar as they do not violate provisions of the fundamental law and treaties made pursuant thereto.

However these Acts of Congress do transgress the limitations of the Constitution and the agreement made with France in the Treaty of Paris regarding the Louisiana Territory. In Paragraph IV of its Answer (p. 4-7) Louisiana avers that these Acts are unconstitutional, null, and void in the following respects:

> 1. To the extent that said acts permit the federal government to exercise proprietary rights in said submerged lands and resources, they are violative of the Treaty of Paris entered into by the United States with France on April 30, 1803 for the cession of Louisiana to the United States, whereby the latter obligated itself to incorporate the purchased territory of Louisiana into the Union according to the principles of the federal

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[10]Manchester v. Mass., 139 U.S. 240, 35 L.Ed. 159.

constitution, and to maintain the inhabitants of Louisiana in their property in the territory with all its rights and appurtenances in the same manner as they had been acquired by the French Republic, and to the same extent as when this territory was in the hands of Spain, and that it had when France possessed it. (8 Stat. 200). Congress was bound by the Treaty of Paris to hold the Louisiana Territory in trust for the states to be formed from it, and could not, and did not attempt to retain any federal domain southward from Louisiana in the Gulf of Mexico when it established the State of Louisiana in 1812. The declarations of the executive in 1945, and of the Congress in 1953, that the southern boundary of the United States extended further seaward than it had been previously recognized could not legally create a new and separate federal domain.

2. Said acts, to the extent that they may recognize federal ownership of said lands and resources, are violative of Article IV Section 3 and 4 of the United States Constitution. To such extent said acts would unlawfully permit the federal government to exercise the prerogatives of the crown in a monarchial form of government, would permit it to invade property and property rights guaranteed to the State of Louisiana, and would unlawfully change and restrict the title and boundaries of the State without its consent.

3. Insofar as said acts confer or recognize title and property rights in the United States and limit or restrict the boundaries or the title of Louisiana in said submerged lands and mineral resources of the Continental Shelf, they exceed

and go beyond the powers of the federal government enumerated in the United States Constitution and are therefore in conflict with the Ninth Amendment thereto.

4. Said acts insofar as they attempt to grant to the United States title and ownership of the subsoil and mineral resources of the Continental Shelf violates the Tenth Amendment of the United States Constitution which reserves to the States all powers and rights not specifically granted to the United States. Louisiana has not relinquished to the federal government any title to, or ownership or right of possession of the seabed, subsoil and mineral resources of the Continental Shelf within its boundaries.

The constitutionality of these acts was considered and approved by this Court in the case of *Alabama v. Texas*, 347 U.S. 272, 74 S. Ct. 481, 98 L.Ed. 689. However in that case the only objection raised by the plaintiff was that Congress had no right whatever to dispose of the federal government's "paramount rights" with respect to the submerged lands, since the "paramount rights" of the United States do not constitute "property" which Congress may dispose of within the meaning of Article IV, Section 3 of the Constitution. The pleas of unconstitutionality made by Louisiana here were obviously not involved in the cited case.

2. Our Fundamental Law Prescribes the Only Methods By Which the United States May Acquire Ownership of New Territory

In *U.S. v. California*, 332 U.S. 19, 67 S.Ct. 1658, 91 L.Ed. 1889 Justice Frankfurter in his dissenting opinion after propounding the above question as to the source of title claimed by the United States said (332 U.S. 44-5):

> " . . . Ownership implies acquisition in the various ways in which land is acquired—by conquest, by discovery and claim, by cession, by prescription, by purchase, by condemnation. When and how did the United States acquire this land?
>
> . . . That has not been remotely established except by sliding from absence of ownership by California to ownership by the United States."

Our fundamental law which enumerates all the powers granted by the States to the Federal Government outlines the only methods by which the latter may acquire new territory.

The first method is set forth in Section 8, Clause 11 of Article I which gives Congress the power to declare and wage war. An incident to war is the conquering of territory. The nation may therefore acquire territory by conquest.

The second method whereby the United States may acquire territory is found in Section 2 of Article II which gives the President, with the concurrence of the

Senate the power to enter into treaties and compacts with foreign nations. So the national government may by treaty with foreign nations acquire new territories.

A third method whereby the central authority may acquire lands and properties is set forth in Section 8, Clause 17 of Article I of the Constitution. This clause of the Constitution gives the Congress the right to purchase property by the consent of the Legislature of the State in which such property may be located, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

The United States did not acquire the bed of the Gulf of Mexico to the edge of the Continental Shelf by conquest, nor did it obtain title by discovery and possession. Nor did the United States acquire these submerged lands by any provision of the Constitution or by any act of purchase or cession from the coastal states.

If the central government acquired it by purchase or cession from a foreign nation, then it must rely on the terms of the Louisiana Purchase and the Treaty with France. But that treaty obligated it to hold these lands in trust, and in trust only, for the States to be formed out of the lands and seas included in the cession. Even without this express obligation, the principles of our republican form of government would require the Federal Government to hold these

lands and seas in trust for the future states to be formed.[11]

The Submerged Lands Act states that the Federal Government has no title to submerged lands within the historic boundaries of the States. This lack of title is implicit in the language of Section 3 of the act that the title to these lands and their resources are *recognized* and *confirmed* in the respective states and that the United States thereby "releases and relinquishes all right, title and interest of the United States, *if any it has*, in and to all said lands—and resources."

If the United States has no title to, or ownership in, the marginal belt lying three leagues from coast in the Gulf or three miles from coast in the two oceans, how and when did it manage to leap frog this belt and claim territory further at sea which had long been occupied and possessed by the coastal States? If the theory of paramount rights and external sovereignty cannot and does not apply within three leagues of the coast by what theory does it apply ten, twenty, thirty or forty leagues from Coast?

The answer to these questions is that paramount rights and external sovereignty have nothing to do with

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[11]New Orleans v. U.S. 10 Pet. 662, 737, 9 L.Ed. 573, 602
Pollard v. Hagan, 3 How. 212, 11 L.Ed. 565
Dred Scott v. Sanford, 19 How. 393, 446-8, 15 L.Ed. 691, 718
Knight v. U.S. Land Assn., 142 U.S. 161, 183, 12 S.Ct. 264, 35 L.Ed. 974, 982
Borax Consolidated v. Los Angeles, 296 U.S. 10, 15, 80 L.Ed. 9, 14

property rights. Paramount rights relate to the prior right of Congress to regulate navigation and commerce and provide for the national defense. External sovereignty gives the national government the exclusive right to handle the affairs of this nation with other countries, to make treaties and international agreements. The theory of the California, Texas and Louisiana cases that such rights can be translated into ownership by executive or judicial decree was, as stated in *The Superior Oil Co. v. Fontenot*, Supra, nullified by Congress when it passed the Submerged Lands Act.

At the time of the adoption of the Constitution the framers were certainly of the opinion that the Federal Government owned no land within the jurisdiction and territory of any State. If title to lands had passed didectly from the Crown to the Union in 1776 the writers of our fundamental law were not aware of it. They undoubtedly viewed the United States as being composed solely of the territory of the original thirteen States.

When the Confederation was formed before the Constitution was adopted the Confederated States owned no land either within or without the jurisdiction or territory of the thirteen States. In fact the Articles of the Confederation (Art. IX) specifically provided:

> "No State shall be deprived of territory for the benefit of the United States."

The foregoing language of the Articles of Confederation was not embodied in the Constitution itself but it is apparent that the same principle pervaded the fundamental law because the Constitution enumerated the manner in which the United States might acquire territory, as has been shown hereinabove. Since the Central Government is one of limited powers, it can only acquire territory in the manner specified by the Constitution. None of these powers form the basis for any title in the Gulf of Mexico, or the Continental Shelf adjoining Louisiana.

No sound argument can be made that these submerged lands are unclaimed lands which Congress can add to the national domain; first, because they constitute a part of the Louisiana Purchase which was held in trust for the State; and second, because they have been claimed and physically possessed by the State since its admission to the Union; and finally because the Constitutional guarantee of sovereignty under our republican form of government, guaranteed by the 9th and 10th Amendments, does not permit the United States thus to colonize or appropriate lands bordering on the individual States:

In *New Orleans v. The United States*, 10 Pet. 662, 723-4, 9 L.Ed. 573, 596, this Court ruled:

> "The power of appropriating private property to public purposes is an incident of sovereignty. And it may be, that by the exercise of this power, under extraordinary emergencies, property which had been dedicated to public use, by the enjoy-

ment of which was principally limited to a local community, might be taken for higher and national purposes, and disposed of on the same principles which subject private property to be taken.

In a government of limited and specified powers like ours, such a power can be exercised only at the mode provided by law; but in an arbitrary government, the will of the sovereign supersedes all rule on the subject."

It is therefore apparent that lands so long possessed as public property by the State cannot be appropriated by the Federal Government except for a necessary national purpose, and by following the procedures required by law of eminent domain.

3. Obligations Assumed by the United States in the Treaty of Cession of Louisiana Are Protected By Article VI and by the Fifth Amendment to the Constitution.

Since the Treaty of Paris of 1803 required the United States to hold the Louisiana Territory in trust for the States to be formed from it, and that treaty is by Article VI of the Constitution the Supreme Law of the Land, the United States cannot violate that trust at this time.

If the Court should find that these Acts of Congress do limit and restrict Louisiana's historic boundaries to three miles or three leagues offshore then they are unconstitutional and illegal to that extent. This is so because the Treaty of Cession made the United

States a trustee for Louisiana and vested in the State to be formed the title to Louisiana to the same extent that it had "in the hands of Spain, and that it had when France possessed it." The Treaty also guaranteed to the inhabitants of the territory protection in the "free enjoyment of their property: and this protection extended to the territory "with all its rights and appurtenances, as fully and in the same manner as they had been acquired by the French Republic. Pertinent portions of this treaty are contained in Defendant's Appendix D. Such treaties combine the elements of legislation, contract, and grant and are interpreted with extreme liberality to effectuate the manifest purposes and objects sought to be achieved.

Sutherland on Statutory Construction (3rd Ed.) Sec. 6507, Vol. 3, p. 262

Tucker v. Alexandroff, 183 U.S. 424, 46 L.Ed. 264,

Sullivan v. Kidd, 254 U.S. 433, 65 L.Ed. 344,

Hauenstein v. Lynham, 100 U.S. 483, 25 L. Ed. 628

Since the Treaty of Cession is a contract in which the United States assumes obligations toward Louisiana and vests in the State certain property rights these vested rights cannot be divested by any provision contained in the Acts of Congress of 1953.

Pacific Mail S.S. Co. v. Joliffe, 2 Wall. 450, 17 L.Ed. 805,

Santovincenzo v. Egan, 284 U.S. 30, 76 L.Ed. 151,

Chae Chan Ping v. U. S., 130 U.S. 581, 32 L. Ed. 1068,

Chirac v. Chirac, 2 Wheat. 259, 4 L.Ed. 234,

Carneal v. Banks, 10 Wheat. 181, 6 L.Ed. 297.

Even if the Congress were to undertake to abrogate the treaty by which this territory was acquired, and it has not remotely suggested an intent to do so, such an abrogation would not operate to deprive Louisiana of rights vested in it 145 years ago, and of territory occupied by the State ever since.

The Treaty of Cession in guaranteeing the property rights of the people of the Louisiana territory used the word property in its broadest sense. Chief Justice Marshall in *Soulard v. U.S.*, 4 Pet. 511, 7 L.Ed. 938, said:

> "In the treaty by which Louisiana was acquired, the United States stipulated that the inhabitants of the ceded territory should be protected in the free enjoyment of their property . . . .
>
> The term 'property', as applied to lands, comprehends every species of title, inchoate or complete. It is supposed to embrace those rights which lie in contract—those which are executory as well as those which are executed. In this respect the relation of the inhabitants to their government is not changed. *The new government takes the*

place of that which has passed away." (Emphasis added)

This decision has been approved and followed in many succeeding cases, including:

Strother v. Lucas, 12 Pet. 419, 435-6, 9 L.Ed. 1137, 1147,

Carpenter v. Rannels, 19 Wall. 138, 141, 22 L.Ed. 77, 78,

Bryan v. Kennett, 113 U.S. 179, 192, 28 L.Ed. 908, 912,

Knight v. United Land Assn., 142 U.S. 161, 183, 35 L.Ed. 974, 982

The property rights referred to in the Treaty of Cession apply to public as well as private property rights.

New Orleans v. U. S., 10 Pet. 662, 723, 9 L.Ed. 573, 597

Furthermore these contract obligations and property rights secured to Louisiana in this Treaty with France are protected by the 5th Amendment to the Constitution. Although a treaty may be subsequently abrogated by a statute, vested rights cannot be divested without violating this amendment, which is a specific limitation on the powers of the United States.

Lynch v. U. S., 292 U.S. 571, 78 L.Ed. 1434.

The Submerged Lands Act and the Outer Continental Shelf Lands Act cannot therefore be construed to restrict Louisiana's historic boundaries without vio-

lating Article VI and the Fifth Amendment to the Constitution.

4. Louisiana's Rights in the Submerged Lands Are Protected by Article IV Sec. 3, and the 9th and 10th Amendments to the Constitution

Other reasons why the United States may not seize for its own use property held in trust for Louisiana are found in Article IV Sections 3 and 4 of the Constitution.

Section 3 of Article IV provides for the creation of new States, and this provision has been construed to prohibit any change in a State's boundary without the consent of its legislature.

Shively v. Bowlby, 152 U.S. 1, 27, 38, 38 L.Ed. 331, 341,

Louisiana v. Miss., 202 U.S. 1, 40, 50 L.Ed. 913, 927,

New Mexico v. Colorado, 267 U.S. 30, 69 L. Ed. 499.

This same section gives to Congress the power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States, *but without prejudice to the rights and claims of any particular State*. Louisiana has an historic claim secured by treaty and contract to all submerged lands adjoining its shores to the 27th parallel of latitude and the United States cannot do anything

respecting this territory to prejudice Louisiana's rights and claims, whether such rights be "inchoate or complete".

The provisions of Section 3, Article IV of the Constitution prohibit the United States from appropriating to itself property which would pass to Louisiana as a necessary incident to its sovereignty and which it obligated itself to hold in trust for the State without the consent of the latter.

Section 4 of Article IV of the Constitution reads in part:

> "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them from Invasion."

The obligation of the United States to protect each State from invasion was not written into the Constitution as a protection against foreign invasion alone. The words foreign invasion appeared in the original draft of the Constitutionl Convention of 1787, but "foreign" was stricken from the final draft. (Elliotts Debates vol 5 p 381, 497, 564). This requirement therefore includes, of necessity, a prohibition against an invasion by the federal government into the domain of any State. Since the Submerged lands adjoining the coast of Louisiana became the property of the State as an attribute of sovereignty and in fulfilment of the trust imposed by the Louisiana Purchase Treaty, the federal government cannot appropriate

these lands and resources to its own use without running counter to this prohibition of the Constitution.

Nor would the guarantee of a Republican Form of Government mean anything if the United States exercised the prerogatives of a monarch and by misapplication of its superior power in certain fields seized this property of the State of Louisiana. The maintenance of the independent existence of the States is as much the concern of the Constitution as the preservation of the Union. As this Court said in *Texas v. White*, 74 U.S. (7Wall) 700, 725, 19 L.Ed. 227, 237:

> "But the perpetuity and indissolubility of the Union by no means implies the loss of distinct and individual existence, or of the right of self government by the States. Under the Articles of Confederation each State retained its sovereignty, freedom and independence, and every power, jurisdiction and right not expressly delegated to the United States. Under the Constitution, though the powers of the States were much restricted, still all powers not delegated to the United States, nor prohibited to the States, are reserved to the States respectively, or to the people. And we have already had occasion to remark at this term, that 'the people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence,' and that 'without the States in union, there could be no such political body as the United States.' Lane Co. v. Oregon, infra, 101. Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their

union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.

When therefore, Texas became one of the United States, she entered into an indisoluble relation. All the obligations of perpetual union, and all the guaranties of republican government in the Union, attached at once to the State. . . "

The following statement taken from the opinion rendered In Re Heff, 197 U.S. 488, 505, 49 L.Ed. 848, 855, is most appropriate here:

"In this Republic there is a dual system of government, national and state. Each within its own domain is supreme, and one of the chief functions of this Court is to preserve the balance between them, protecting each in the power it possesses, and preventing any trespass thereon by the other."

Louisiana in this case asks this Court to preserve its right to property which is an attribute of State sovereignty, and to protect the State from trespass by the United States[12] Under our dual system of sover-

[12]Parker v. Brown, 317 U.S. 341, 87 L.Ed. 315;
Skiriotes v. Florida, 313 U.S. 69, 77, 85 L.Ed. 1193, 1200;
Osborn v. Ozlin, 310 U.S. 53, 62, 84 L.Ed. 1074, 1078;
Ashton v. Cameron County Co., 298 U.S. 513, 531, 80 L.Ed. 1309, 1314;
Florida v. U.S., 282 U.S. 194, 211-12, 75 L.Ed. 291, 302;
Mayor of N. Y. v. Miln, 11 Pet. 102, 139, 9 L.Ed. 648, 662.

eignty, guaranteed by the 9th and 10th Amendments to the Constitution, the Court must preserve the balance between the State and the nation in this respect.

D. LOUISIANA'S HISTORIC BOUNDARIES EXTEND TO THE 27TH PARALLEL OF LATITUDE

A determination of Louisiana's historic boundaries is one of the requirements of Section 4 of the Submerged Lands Act, (43 U.S.C. 1312), which reads, in part, as follows:

> "Nothing in this Section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographic miles if it were so provided by its constitution or laws prior to or at the time such State became a member of the Union." (67 Stat. 31, 43 U.S.C. 1312)

The above quoted provision is also in accord with the treaty obligations assumed by the United States in the Louisiana Purchase. However, those provisions which seek to limit boundaries of the State three leagues or three miles from coast are contrary to and in conflict with the treaty whereby the United States purchased the Louisiana territory.

A determination of Louisiana's historic boundaries, among other things, involves an interpretation and application of the provisions of the Treaty of Paris between France and the United States on April 30 in

1803 whereby the territory of Louisiana was ceded to the United States.[13] To properly interpret this treaty recourse must be had to certain prior treaties between France and Spain, i. e., the Treaty of St. Ildefonso dated September 15, 1880 and the Treaty of Fontainbleau dated November 3, 1762. These treaties and various proclamations and edicts of the Kings of France and Spain furnish evidence concerning the historic boundaries of Louisiana and must be considered in interpreting the Act of Congress creating the Territory of Orleans, [14] and the Acts of Congress admitting the State of Louisiana into the Union.[15] Excerpts from these and other treaties appear in Defendants Appendix, Sections D. and E.

The Acts of Congress creating the Territory of Orleans, and thereafter forming this territory into the State of Louisiana, were undoubtedly passed for the purpose of carrying out the obligations of the United States assumed in the Treaty of Paris whereby this territory was acquired from France. The first Article of this treaty reads, in part.[16]

> ". . . The French Republic . . . doth hereby cede to the said United States, in the name of the French Republic, for ever and in full sovereignty,

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[13]8 Stat. 200, 2 Miller's Treaties 498.

[14]2 Stat. 283, approved March 26, 1804.

[15]2 Stat. 701, approved April 8, 1812
2 Stat. 708, approved April 14, 1812

[16]Miller's Treaties, Vol. 1, Page 498, 8 Stat. 200.

the said territory, *with all its rights and appurtenances*, as fully and in the same manner as they had been acquired by the French Republic." (Emphasis supplied)

This paragraph in the Treaty of Paris, is prefaced by a recital taken from the Treaty of St. Ildefonso of September 15, 1800 which is also quoted, in part:

> "His Catholic Majesty (Spain) promises and engages, on his part, to retrocede to the French Republic . . . the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other States."

Article 3 of the Treaty of Paris concerning the cession of the Louisiana territory to the United States, provides:

> "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion they profess."

The Articles of the Louisiana cession thus obligated the United States to incorporate Louisiana into the Union according to the principles of the Federal Con-

stitution, and to maintain the inhabitants of Louisiana in their property in the territory with all its rights and appurtenances in the same manner as they had been acquired by the French Republic, and to the same extent as when this territory was in the hands of Spain, and that it had when France possessed it. In other words, the United States agreed that the people of Louisiana would be guaranteed in their ownership of the territory within its historic boundaries when the State should be formed and admitted to the Union. It is therefore important to determine the extent of the Louisiana territory and its boundaries when it was successively occupied by Spain and France. We are here concerned, of course, with only that portion of the territory of Louisiana bordering on and in the Gulf of Mexico, which was incorporated into the State in 1812.

1. Ownership of Submerged Lands Passed to the State As an Attribute of Sovereignty, and Is Implied in the Act of Admission Describing Louisiana's Boundaries

The Act of April 8, 1812 describes Louisiana boundaries in part as follows:

> ". . . Beginning at the mouth of the River Sabine; thence by a line to be drawn along the middle of said river, including all islands, to the thirty-second degree of latitude; thence due north to the northern-most part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the River Mississippi; thence

> down the said river to the River Iberville; and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain to the Gulf of Mexico; thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast."

The Attorney General of the United States contends that the words "bounded by the said Gulf including all islands within three leagues of the Coast" mean that Louisiana's southern boundary is a land boundary and that its dominion stopped at the shore line of the Gulf of Mexico.

No one has yet suggested why Congress in 1812 should think that islands three leagues distant from coast should be a part of the territory belonging to Louisiana but the submerged land connecting the islands with the mainland should not.

If the southern boundary is a land boundary, as claimed by government counsel, then by implication the transfer of sovereignty over this portion of the Louisiana territory carries with it sovereignty over the submerged lands and territorial waters to the full extent of Louisiana's historic boundaries.

In the early case of *Martin v. the Lessee of Waddell.* (1842), 16 Pet. 367, 413-17, 10 L.Ed. 997, 1014-15, this Court held that the lands under waters adjoining the shores of a state pass to the transferee on a transfer of sovereignty, as one of the royalties incident to the powers of government, and are to be held in the

same manner and for the same purposes that the navigable waters of England and the soils under them are held by the Crown; and it would require plain language in the act transferring sovereignty over the territory in question to persuade the Court that the State's interest in such waters and submerged lands were retained by the transferror. The following excerpts are taken from the opinion of Mr. Chief Justice Taney in that case:

> " . . . The estate and rights of the king passed to the duke in the same condition in which they had been held by the crown, and upon the same trusts. Whatever was held by the king was a prerogative right passed to the duke in the same character. * * * And in the judgment of the court, the land under the navigable waters passed to the grantee as one of the royalties incident to the powers of government; and were to be held by him in the same manner, and for the same purposes that the navigable waters of England, and the soils under them, are held by the crown.
>
> This opinion is confirmed by referring to similar grants for other tracts of country upon this continent, made about the same period of time. * * * In all of them from the time of the settlement to the present day, the previous habits and usages of the colonists have been respected, and they have been accustomed to enjoy, in common, the benefits and advantages of the navigable waters for the same purposes, and to the same extent that they have been used and enjoyed for centuries in England. Indeed, it could not well have

been otherwise. * * * And it would require very plain language in these letters patent to persuade us that the public and common right of fishery in navigable waters, which has been so long and so carefully guarded in England, and which was preserved in every colony founded on the Atlantic borders, was intended, in this one instance, to be taken away. But we see nothing in the charter to require this conclusion. * * *

* * * And if the great right of dominion and ownership in the rivers, bays, and arms of the sea, and the soils under them, were to have been severed from the sovereignty, and withheld from the crown; if the right of common fishery for the common people, stated by Hale in the passage before quoted, was intended to be withdrawn, *the design to make this important change in this particular territory would have been clearly indicated by appropriate terms; and would not have been left for inference from ambiguous language.* (Emphasis supplied)

. . . And when the people of New Jersey took possession of the reins of government, and took into their own hands the powers of sovereignty, the prerogatives and regalities which before belonged either to the Crown or the Parliament, became immediately and rightfully vested in the State. * * *"

The principles of the foregoing decision have been approved in many subsequent cases.[17]

This Court has on many occasions declared that State ownership of submerged lands seaward of its shores is an attribute of sovereignty possessed by the State though not expressly provided for in the act creating the State, and even though such State may have never seen fit to define its limit.[18] The follow-

[17]Den v. The Jersey Co., 15 How. 426, 432-3, 14 L.Ed. 757, 760-1.
Barney v. Keokuk, 94 U.S. 324, 338, 24 L.Ed. 224;
Hardin v. Jordan, 140 U.S. 371, 380-2, 35 L.Ed. 428, 433;
Shively v. Bowlby, 152 U.S. 1, 16, 47, 38 L.Ed. 337, 349;
Mann v. Tacoma Land Co., 153 U.S. 273, 283, 38 L.Ed. 714, 717;
Alaska Pac. Fisheries v. U. S., 248 U.S. 78, 87-9, 63 L.Ed. 138, 140-1;
Mass. v. New York, 271 U.S. 65, 87-90, 70 L.Ed. 838, 848-9;
New Jersey v. Delaware, 291 U.S. 361, 373-4, 78 L.Ed. 847, 853.

[18]Pollard v. Hagan, 44 U.S., 3 How. 212, 11 L.Ed. 565;
Weber V. Harbor Comm. (1873) 18 Wall. 57, 66, 21 L.Ed. 798;
McCready v. Virginia, 94 U.S. 391, 24 L.Ed. 248;
Packer v. Bird (1890), 137 U.S. 661, 672, 34 L.Ed. 819, 821-2;
Hardin v. Jordan (1890), 140 U.S. 371, 35 L.Ed. 428;
Illinois Cent. R. Co. v. Illinois (1892), 146 U.S. 387, 434-5, 452-460, 36 L.Ed. 1018, 1036-7, 1042-45;
Shively v. Bowlby (1894), 152 U.S. 14-16, 38 L.Ed. 331, 336-7, 341;
The Abbey Dodge v. U.S., 223 U.S. 166, 173-4, 177, 56 L.Ed. 390, 392-4;
Massachusetts v. New York (1926), 271 U.S. 65, 89, 70 L.Ed. 838, 849
U. S. v. Oregon, 295 U.S. 1, 14, 79 L.Ed 1267, 1274;
Hackworth's Digest of International Law, Vol. 1, p. 623-4.

ing is quoted on this point in the case of *Hardin v. Jordan* (1890), 140 U. S. 371, 381, 35 L.Ed. 428, 433:

> ". . . Such title to the shore and lands under water is regarded as incidental to the sovereignty of the State—a portion of the royalties belonging thereto and held in trust for the public purposes of navigation and fishery-and cannot be retained or granted out to individuals by the United States Pollard v. Hagan, 44 US 3 How. 212 (11:565); Goodtitle v. Gibbe, 50 US, 9 How. 471 (18:220); Weber v. Board of Harbor Comrs. 84 US 18 Wall. 57 (21:798). Such title being in the State, the lands are subject to state regulation and control, under the condition, however, of not interfering with the regulations which may be made by Congress with regard to public navigation and commerce. The State may even dispose of the usufruct of such lands, as is frequently done by leasing oyster beds in them ,and granting fisheries in particular localities. * * * * *"

We also quote from the opinion in *Massachusetts v. New York* (1926), 271 U. S. 65, 89, 70 L.Ed. 838, 849:

> "The dominion over navigable waters and property in the soil under them, are so identified with the exercise of the sovereign powers of government that a presumption against their separation from sovereignty must be indulged. . . . It follows that, wherever there is a grant by a State. . . of the rights and title of government and sovereignty over a specified territory. . . . the

> grant . . . carries with it as an incident, title to lands under navigable waters."

In the case of *State v. Ruvido* (Maine, 1940), 15 Atl. 2d. 293, 297, the Supreme Court of Maine held that, even in the absence of a statute, a State's boundary and jurisdiction automatically include the marginal sea, saying:

> "Such a statute, however, would be only declaratory of the law . . . the legislature by its act cannot extend the jurisdiction of the state beyond the limits generally rceognized by law. The sovereignty over territorial waters exists even though the state has never seen fit to define their limit. The State of Maine has exercised this authority as to portions of these waters. . . There is no reason why it may not assume control over all."

The attention of this court is called to quotation, from Mouton, "*The Continental Shelf*," found in Appendix B in which the doctrine of the extension of land mass into the continental shelf and its continuation of and association with the shore is stressed as a matter of necessity.

2. The Louisiana Purchase Obligated the United States To Hold the Territory of Louisiana in Trust for Future States to the Full Extent that the Territory Had Been Claimed by France and Spain.

The Territory of Orleans, that part of the Louisiana Purchase which became the State of Louisiana, included all submerged lands and waters extending into

the Gulf of Mexico that had previously been under the claim and dominion of France and Spain. The United States acquired this territory from France, in trust, for the inhabitants of the territory and for the State to be formed out of the property thus ceded by France.[19] This obligation of trust is expressly stipulated in Article 3 of the Treaty of Paris whereby the territory of Louisiana was ceded by France to the United States.[20] During the 18th Century France and Spain, without protest from other powers, and with the consent of Great Britain, held dominion over the Continental Shelf of Louisiana as far as forty leagues offshore.

As early as 1763 Great Britain, France and Spain, who then possessed the entire North American Continent, agreed that fifteen and even thirty leagues was a reasonable measure of the width of territorial waters. A treaty between these three powers signed at

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[19]New Orleans v. U. S., 10 Pet. 662, 737, 9 L.Ed. 573, 602;
Pollard v. Hagan, 3 How. 212, 11 L.Ed. 566;
Goodtitle v. Kibbe, 9 How. 471, 13 L.Ed. 220;
Doe v. Beebe, 13 How. 25, 14 L.Ed. 35;
Barney v. Keokuk, 93 U.S. 324, 24 L.Ed. 224;
Dred Scott v. Sanford, 19 How. 393, 446-8, 15 L.Ed. 691, 718;
Knight v. U. S. Land Assn. 142 U.S. 161, 183, 35 L.Ed. 974, 982;
Shively v. Bowlby, 152 U.S. 43, 38 L.Ed. 337, 347;
Borax Cons. v. Los Angeles, 296 U.S. 10, 15, 80 L.Ed. 9, 14.

[20]8 Stat. 200-7;
2 Miller's Treaties 498.

Paris on February 10, 1763 stipulated such a limit for Britain's territorial waters off Nova Scotia and New Foundland.[21]

In 1790 Spain and England agreed to a ten league territorial limit offshore for Spain's possessions in the Pacific Ocean and in the South Seas (Gulf of Mexico and Carribbean Sea and in South America) and a like boundary for England's possessions in North America. This latter agreement was in the form of a treaty signed at Escurial on October 28, 1790—just ten years before Spain ceded Louisiana to France in the Treaty of St. Ildefonso.[22] This Treaty contains the following provisions in Articles 3, 4, and 6:

"Article III

. . . It is agreed, That their respective Subjects shall not be disturbed or molested, either in navigating or carrying on their Fisheries in the Pacific Ocean, or in the South Seas, or in landing on the Coasts of those Seas, in Places not already occupied, for the Purpose of carrying on their Commerce with the Natives of the Country * * *"

"Article IV.

His Britannic Majesty engages to take the most effectual Measures to prevent the Naviga-

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[21]Journal House of Commons, 18 March 1763, p. 589.

[22]Convention between His Britannic Majesty and the King of Spain—Journal House of Commons, December 3, 1790, p. 30. (See Appendix C)

tion and Fishery of His Subjects in the Pacific Ocean, or in the South Seas, from being made a Pretext for illicit Trade with the Spanish Settlements; and, with this View, it is moreover expressly stipulated, that British Subjects shall not navigate, or carry on their Fishery, in the said Seas, within the Space of Ten Sea Leagues from any Part of the Coasts already occupied by Spain."

"Article VI.

It is further agreed, with respect to the Eastern and Western Coasts of South America, and to the Islands adjacent, That no Settlement shall be formed hereafter, by the respective Subjects in such Parts of those Coasts as are situated to the South of those Parts of the same Coasts, and of the Islands adjacent, which are already occupied by Spain: * * *"

The provisions of this treaty were never questioned by any nation. France had then surrendered all her possessions in North America, and neither France nor any other nation protested this claim to these territorial waters in the American seas.

During the time that France possessed Louisiana her boundaries extended beyond as far as forty leagues to the 27th parallel in the Gulf, and included the entire Continental Shelf.

As stated in "The Louisiana Purchase", an historical sketch from the files of the General Land Office issued by the Department of the Interior in 1933 and re-printed in 1955 (Page 11):

"French title to the territory called 'Louisiana' in the Mississippi Valley had its origin and

was based upon the discovery and Proclamation of LaSalle, April 9, 1682."

LaSalle in his Proclamation of April 9, 1682 took possession of the country of Louisiana in the name of France with its Seas, ports and bays as far as the mouth of the Mississippi in the Gulf of Mexico to the 27th degree of latitude. This parallel of latitude extends some forty leagues seaward into the Gulf. This proclamation was made by Notarial Act and read with great ceremony in the presence of French Troops and a number of Indian tribes. It reads, in part.[23]

> "In the name of the Most High, Mighty, Invincible and Victorious Prince, Louis the Great, by the Power of God, King of France and Navarre, 14th of that name, this the 9th day of April, one thousand six hundred and eighty-two, I, by virtue of the commission of his Majesty, which I hold in my hand and which may be seen by all whom it may concern, have taken and do now take possession of this country of Louisiana, the seas, ports, bays, adjacent straits, and all the nations, peoples, provinces, cities, towns, villages, mines, minerals, fisheries, streams, and rivers, comprised in the extent of said Louisiana, * * * as also along the River Colbert, or Mississippi and rivers which discharge therein—as far as its mouth in (dans) the sea or Gulf of Mexico about the 27th degree

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[23]Manuscript of Notarial Proclamation of LaSalle, Dept. of Marine Archives of Paris; (See Appendix D.)

"The Louisiana Purchase", issued by the General Land Office, Washington, D. C. (1955).

> of the elevation of the North Pole, and also to the mouth of the River of Palms; * * *"

LaSalle therefore claimed the country of Louisiana and the adjacent seas to the 27th parallel of latitude *in the sea,* or Gulf of Mexico. The 27th parallel of latitude is the same latitude as that of the mouth of the River of Palms in Florida as claimed by LaSalle in the Proclamation. It is stated on Page 7 of "The Louisiana Purchase" that the Palm River is difficult to locate on the map of Florida as it is not named, but the old maps show it as a river emptying into Palm Sound, now called Sarasota Bay. Sarasota Bay is in the proximity of the 27th parallel of latitude. This parallel of latitude lies offshore from the State of Louisiana some 40 leagues into the Gulf of Mexico. The seas referred to in LaSalle's Proclamation and claimed as the property of France therefore extended 40 leagues into the Gulf of Mexico beyond the shores of Louisiana.

Again referring to the Proclamation of LaSalle, the "Louisiana Purchase" states:

> "These Acts of LaSalle were, in fact, the foundation of French ownership; and have been so considered by all nations since 1682."

The same pamphlet on "The Louisiana Purchase" states on page 12:

> "French title to the Gulf territory from the Mississippi River to Palm River, on the Gulf coast of Florida, as a part of original Louisiana, was as good as French title to the Mississippi Valley, for both districts came under the French flag at the

same time and for the same reason, viz, the discoveries of LaSalle and his proclamation based thereon, at the mouth of the Mississippi River, April 9, 1682. It therefore follows that subsequent cessions of 'the whole territory known under the name of Louisiana,' or of 'the colony or province of Louisiana, with the same extent * * * that it had when France possessed it', conveyed title to this territory just as surely as they conveyed title to territory drained by the Mississippi River and its tributaries, and the title thus conveyed was just as good."

LaSalle's claim to the 27th degree of latitude was not made in error. At that time explorers and navigators could make accurate measurements in latitude by the simple use of the quadrant although the determination of longitude was more difficult. LaSalle's claims were recognized by the American Department of State as being "certain, authentic and particular."

In a letter written by the Secretary of State, John Quincy Adams, addressed to the Spanish Minister, De Onis, under date of March 12, 1818, the statement is made:

> "Of all the heroic enterprise which, in the sixteenth and seventeenth centuries signalized the discoveries of Europeans upon this Continent, there is not one of which evidence is more certain, authentic, particular, than those of LaSalle."
>
> American State Papers, Vol. IV, p. 472

Some of the early publicists of International Law expressed the view that the shallowness of the waters

should be considered in determining the proper seaward limits of a littoral nation.

Valin in his work, *Nouveau commentaire sur l' ordonnance de la marine du mois d'aout 1681*" (1760), page 638 said:

> "Others, finally, have taken for the rule the extent of sea which can be seen from the shore; but this measure being uncertain by its nature, it would have been better, perhaps, to reckon the domain over the adjacant sea by the sounding-lead, and to assign its limits exactly at that point where the lead ceased to fetch bottom; so that, outside soundings, the sea would have been recognized as free for navigation and fishing, as being incapable of belonging to any one's domain."

To the same effect, see *Fauchille's "Treatise on International Public Law,"* 8th ed., Tome 1, 2nd part.

The sounding line was used to delineate the territorial limits of Louisiana by France. In 1705 an official French map of "The Coasts and Environs of the Mississippi River as Discovered by Monsieur de La Salle in 1683 and 1699" was prepared by N. de Fer, Geographer of the Dauphin. This map shows a sounding line which apparently went to the 100 fathom line and which bears the warning:

> "Les gros bastimens n' aproche pas la coste n'y ayant de fond que jusque a ces points."

The translation of the warning means that large ships (armed vessels) must not approach the coast beyond these points (this line). Defendants Map Ap-

pendix contains a reproduction of this 1705 map. The old French maps invariably show this line.

Louisiana's historic boundaries therefore were forty leagues into the Gulf "when France possessed it" and the Treaty between France and the United States signed at Paris, April 30, 1803 for the Louisiana Purchase obligated the United States to incorporate this territory in the State to be formed.

Although in later years, and for certain purposes only, the United States and Great Britain have championed the claim that territorial waters extend only three miles seaward, they have not consistently followed such a rule. From time to time they have in various respects made exceptions and agreed to a broader extent of territorial seas.[24]

The cannon-shot rule, which developed into a three mile rule in the nineteenth Century was accepted by some nations, and was applied originally to the shores of Europe. Because of the narrowness of the Continental Shelf there, the large number of small nations with limited coast lines, and the great population to be served, it was neither practical nor desirable to permit any one nation to claim and possess exclusive rights to a broader expanse of territorial waters than the range of cannon-shot, or 3 miles. These conditions did

[24]Church v. Hubbart, 2 Cranch 187, 234-5, 2 L.Ed. 249, 265;

Riensenfeld, "Protection of Coastal Fisheries Under International Law", p. 131-6, 260;

Colombos, "International Law of the Sea", p. 103.

not exist in the new world, and particularly in the Gulf of Mexico where wider belts in the marginal seas were accepted as a rule.

Chief Justice Marshall in 1804, the year following the Louisiana Purchase, made the following statement in *Church v. Hubbart*, 2 Cranch 187, 234-5, 2 L.Ed. 249, 265:

> "In different seas, and on different coasts, a wider or more contracted range, in which to exercise the vigilance of the government, will be assented to. Thus in the channel, where a very great part of the commerce to and from all the north of Europe, passes through a very narrow sea, the seizure of vessels on suspicion of attempting an illicit trade, must necessarily be restricted to very narrow limits; but on the coast of South America, seldom frequented by vessels but for the purpose of illicit trade, the vigilance of the government may be extended somewhat further; and foreign nations submit to such regulations as are reasonable in themselves and are really necessary to secure that monopoly of colonial commerce, which is claimed by all nations holding distant possessions." * * *

As will be hereinafter shown the United States has never applied the so-called three mile rule to the coasts of the Gulf of Mexico. On the other hand it has consistently recognized a three-league boundary in the Gulf until 1945 when the President declared that the sub-soil and resources of the entire Continental Shelf "appertained" to the coastal States on all the

coasts of the United States. This is graphically borne out by excerpts contained in Defendants Appendix E, and Defendants Map Appendix.

E. LOUISIANA'S HISTORIC BOUNDARIES AND ITS CLAIM TO THE CONTINENTAL SHELF ARE IN ACCORD WITH INTERNATIONAL LAW

LaSalle's Proclamation in which he took possession of the territory of Louisiana including the sea to the 27th parallel of latitude was recognized as a matter of international law at that time. The entire Continental Shelf off Louisiana's coast is included within this parallel of latitude and the sub-soil in the Continental Shelf off the American coast and off the shores of other nations was recognized in International Law as a legitimate claim of the coastal State at the time when Louisiana was admitted to the Union and at this present time.

1. Treaties Between World Powers in the 17th and 18th Centuries Recognized Territorial Jurisdiction and Ownership of the Continental Shelves in the American Seas.

Long prior to the time Louisiana was admitted to the Union treaties were made between the nations that colonized the North American Continent relating to fishing "banks". A "bank" is defined as "an elevation coming nearer the surface than 100 fathoms, but not so near as 6 fathoms." See Encyclopediae Britannica, 1945 Ed., Vol. 16, p. 682.

The Treaty of Utrecht in 1713 concluded the war

of the Spanish Succession and consisted of a series of treaties between England, France, Spain, Austria, United Provinces, and other European nations. The treaty between Great Britain and France entered into on March 4, 1713, and assented to by the other nations, in Article VII prohibited France from fishing off the banks of Nova Scotia within 30 leagues from shore.

Later in the preliminary Articles of Peace signed at Fontainbleau, November 3, 1762, by Great Britain and France the provisions of the Treaty of Utrecht were reiterated and confirmed, except that the Gulf of St. Lawrence territory limits were fixed at three leagues from the British coast. Outside of the Gulf of St. Lawrence these territorial limits were fixed at "fifteen leagues from the coast of the Island of Cape Breton." In the definitive Treaty of Peace signed at Paris, February 10, 1763, Spain also signed the final articles which included the provisions as to territorial limits on the Canadian coast.

The definitive Treaty of Peace and Friendship between Britain and France signed as Versailles on the 3rd day of September, 1783, reaffirmed the Treaty of Utrecht of 1713. In Article V of this Treaty the Subjects of France were only permitted to fish outside of the Gulf of St. Lawrence, within 30 leagues of the coast as provided in the Treaty of Utrecht. However, they were permitted to fish within three leagues of the coast in the Gulf of St. Lawrence in conformity with the 5th Article of the Treaty of Paris of 1763.

Since the New Foundland banks did not extend

further than thirty leagues offshore the three Treaties referred to above recognized the right of Great Britain to extend its territorial claims so as to include the entire Continental Shelf in that area.

2. Nations Have Always Recognized the Right of Sedentary Fishing As An Attribute of Ownership of the Submerged Lands of the Continental Shelf.

Beginning in 1811 and continuing on down to date the family of nations has recognized the rights of littoral States to resources in the seabed and the subsoil of the Continental Shelf. Various nations and various dominions of the British Empire have been accorded the right to exclude other nations from exploiting the seabed and the sub-soil off their coasts. These rights dealt particularly with pearl fisheries and other sedentary fishing.

Ceylon protected its pearl fisheries as early as 1811 when it prohibited foreign ships from hovering within an area between the 4 and 12 fathom lines. This area stretched at some points to a distance 20 miles from the shore.[25]

In 1925 Ceylon enacted a new pearl fisheries ordinance which applied to "pearl banks" which were de-

[25]Ceylon Ordinance Rev. ed. 1894, Vol. 1, p. 13;
Riesenfeld, "Protection of Coastal Fisheries Under International Law", p. 169;
Colombos, "International Law of the Sea", 3rd. ed. p. 306;
Vattel's Law of Nations (Chitty ed. 1883), p. 127-8.

fined as an area between the 3—and in some places 5-fathom line and the 100 fathom line. (The 100 fathom line marks the limit of the Continental Shelf off the Louisiana coast)[26].

Ireland passed its sea fisheries act in 1868 for the purpose of regulating oyster fishing in waters within a distance of 20 miles seaward from the straight line between Lambay Island and Carnsore Point.[27]

Various Australian States have a number of statutes protecting oyster and pearl fisheries covering areas that stretch out considerably in the sea. Thus Queensland passed its "Pearlshell Beche-de-Mer Fishery Act" in 1831 which applies to an area extending in some places as far as 250 miles from the coast.[28]

Western Australia protects its oyster fisheries by a statute passed in 1881, and protects its pearl fisheries by the Pearling Act in 1912. These acts do not set any limit within which the Governor might declare a part of the ocean to be one of the protected "pearl-shell areas".[29]

Jessup in his law of Territorial Waters and Maritime Jurisdiction (1927) at page 16 says:

"Judging from the official map of New

[26]Riesenfeld, "Protection of Coastal Fisheries Under International Law"

[27]Colombos, "International Law of the Sea", 3rd ed., p. 305.

[28]Riesenfeld - p. 170.

[29]Riesenfeld - p. 170; Colombos - p. 307.

Guinea and Papua (at page 969 Official Year Book of the Commonwealth of Australia, No. 15, 1922) the British claim to jurisdiction in these regions is very extensive indeed, being measured by a line drawn frequently more than a 100 miles from shore to embrace the numerous scattered islands. The Queensland Boundary is shown in part as extending more than 100 miles out to sea."[35]

Textwriters as early as 1803 recognized that the coastal states had a claim in the Continental Shelf adjoining their shores. Mouton, in his work "The Continental Shelf", page 33, reviews the statements of various writers on this subject as follows:

"Already in 1803 de Rayneval, p. 161, argued on geological grounds:' . . . le fond de la mer, le long descotes, peut etre considere comme ayant fait partie du continent, et qu'il est cela considere comme en faisant encore partie'. In the Proclamation of President Truman we read in the fourth paragraph:' . . . since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it . . . ' and in the Mexican and Argentine Declarations we find words of the same tenor as in the Peruvian Decree of 1 August, 1947,: . . . ' the continental shelf forms a single morphological and geological unity with the continent'. Yepes, who said in the 67th meeting of the International Law Commission, p. 4: 'The first and most important was the rule of continuity, according to

[35] See also Mouton, "The Continental Shelf", p. 138-143.

which the continental shelf was only the submarine continuation of the territory above water.' And finally Smith, p. 8: 'The shelf is nothing more than an extension of the continent into the sea. It may be argued that this fact alone gives a State paramount right to assert its claim to those resources. It would seem that the principle of propinquity is another way of stating that the geography of the location gives a State a paramount right to such resources.' "

This writer goes on to make the following statement regarding Bottom-Fisheries on page 135 of the above quoted work:

"As far as bottom-fisheries are carried out by trawling, they are linked up with the shelf, as described in Chapter I (the sea-bottom which is not deeper than 100 fathoms), because trawling is mostly carried out up to this depth. * * *

As far as declarations or decrees do claim the seabottom or sea-bed of the continental shelf to belong to the coastal State, or being under the control and jurisdiction of the coastal State, it is obvious that trawling by foreign fishermen on that sea-bed will be objected to.

It would be closing our eyes to reality if we tried to argue that bottom-fish are not fixed to the sea-bed but move freely and only live on or near the sea-bed. The trawlnet scrapes the seabottom very closely. . . . "

Riesenfeld quotes the following statement made in 1803 by de Rayneval in his "Institutions du droit de la Nature et des gens":[31]

[31]Riesenfeld, "Protection of Coastal Fisheries Under International Law", p. 31.

"The sea which washes the shores is deemed to form a part thereof; its safety and tranquillity render this property necessary: the sea must play the part of a bulwark. We could add that the bottom of the sea along the coasts can be considered as having formed a part of the continent and is therefore still considered as forming such part.

But the extent of this property is not determined by a uniform rule. Some fix it at thirty leagues, others only at three; others again fix it at the range of a cannon placed upon the shore. Along the southern coasts of France the distance was ten leagues with regard to the moors."

Proprietary Exercise of fishery rights are enenlarged upon in Defendants Appendix B.

3. International Law Has Always Recognized Effective Occupation of the Sea-Bed and Sub-Soil of the Continental Shelf As a Basis of Title in The Coastal State.

The inhabitants of Louisiana living in the coastal area have depended upon trawling, shrimping and oyster fishing for their livelihood ever since the State became populated. The State of Louisiana has enacted laws beginning in 1870 and continuing on down to the present date regulating the cultivation and taking of oysters, fish, trawling and shrimping, and drilling wells for the production of oil, gas and other minerals. (Excerpts from the acts of the Legislature of Louisiana referred to hereafter are contained in Defendants Appendix, Section H.) These Acts of the

Louisiana Legislature usually begin by an assertion that the State of Louisiana owns the beds of the bays and inlets bordering on the Gulf of Mexico and on that part of the Gulf within its jurisdiction not heretofore sold or conveyed by the State. They provide for the leasing of the bed of the Gulf for the taking of oysters and for mineral production. Act 18 of 1870 forbids aliens from fishing or removing oysters from any of the reefs, bays and coasts of the State of Louisiana.

Act 106 of 1886 of the Legislature of Louisiana provides that the bed of the Gulf of Mexico adjoining Louisiana "shall continue and remain the property of the State of Louisiana, and may be used as a common by all the people of the State for the purpose of fishing and of taking and catching oysters and other shellfish, subject to the reservations and restrictions hereinafter imposed." This Act of the Legislature vests authority in the Police Juries of any Parish "in which natural oyster beds are formed and in which there are water beds and water ways suitable for oyster planting and cultivation" to make regulations for the enforcement of the Act. It makes owners and masters of canoes, boats, or vessels registered or licensed under the Act, officers for the purpose of arresting persons who may violate the provisions of the Act.

A reference to Sheets 1115 and 1116 prepared by the United States Coast & Geodetic Survey of the United States—Gulf coast, Mississippi River to Galveston, filed in this Court as an Appendix to this brief, shows the oyster shoals extending beyond the line

adopted by the Legislature of Louisiana as its coast line in Act 33 of 1954. These shoals extend as much as 25 or 30 miles seaward in some places.

In 1896 the Louisiana Legislature adopted Act 121 which embodies many of the provisions of prior Acts on the same subject that were passed in 1886 and in 1892. It contains a provision that "the citizens of this State shall have the exclusive privilege to fish or to take oysters in any natural oyster bed or shoal in its territorial waters in the Gulf of Mexico." Act 144 of 1908 of Louisiana creates a Commission for the Conservation of Natural Resources to cooperate with a similar Commission of the Federal Government in the matter of conservation of natural resources, including the prevention of waste and the extraction of oil, gas and other minerals.

Louisiana Act 189 of 1910 declares that all that part of the Gulf of Mexico within the jurisdiction of the State "including all natural oyster reefs and all oyster and other shell fish growing therein shall be, continue and remain the property of the State of Louisiana." Various Acts of the Louisiana Legislature beginning with Act 245 of 1910 declare that all salt water shrimp found in the waters of the State are property of the State, and regulate the manner in which they shall be taken.

Act 168 of 1912 levies a license on seines used for the taking of shrimp and the license fee is graded to cover seines in excess of 200 fathoms in length. This

Act was amended by Act 193 of 1916 to increase the tax on seines over 300 fathoms in length. The law therefore contemplated the taking of shrimp in the deeper waters lying far offshore in the Gulf of Mexico. Witnesses will testify that the State has regulated shrimping and trawling to the edge of the Continental Shelf.

The Legislature of Louisiana in 1914 passed Act 271 which authorized the Governor to lease the water bottoms of the State "for the development and production of oil, gas, coal, salt, sulphur, lignite, and any other minerals". Other Acts for this purpose were enacted in subsequent years specifically for the purpose of leasing the bed of the Gulf of Mexico. The first lease for this purpose offshore in the Gulf of Mexico was executed by the Governor on January 3, 1920. Subsequent to that date leases have been executed by the State of Louisiana on almost two million acres of land and these leases extend up to 50 miles offshore in the Gulf of Mexico.

Louisiana can show by the testimony of witnesses the extent to which it has exercised jurisdiction over the waters, the sea-bed and the subsoil of the Gulf of Mexico as far as the memory of living witnesses can go. This exercise of jurisdiction has included the greater part of the Continental Shelf, and the United States as well as foreign nation have acquiesced in Louisiana's possession of the Shelf for so long that its claim thereto amounts to undisputed title, that is, until oil was discovered and produced in such large quantities that

the Federal Government devised a method of claiming the Shelf as property affected with "a national interest."

These Acts of Louisiana exercising exclusive jurisdiction over and possession of the sub-soil and sea-bed of the Gulf of Mexico since the admission of the State to the Union in 1812, with the acquiescence of the United States and the family of nations, constitutes a basis of State title and ownership parallel to that of Ceylon, New South Wales, Australia, New Guinea, Ireland and other constituent parts of the British Empire. In this respect the United States is able to assert federal jurisdiction over the Continental Shelf (within the limits of its constitutional powers) not only because of the Louisiana Purchase Treaty but also by means of the ownership acquired by Louisiana through immemorial possession and effective occupation thereof.

Mouton, in his work on "The Continental Shelf", page 153, comments on this subject as follows:

> "As the coastal State acts as proprietor, the question may be asked where this right came from. The Under Secretary of State for the Colonies, answering a question to that effect regarding the chank fisheries of Ceylon, in the British Parliament in 1923, (column 993) said: 'The claim of the Ceylon Government to this fishery is based on immemorial user by successive sovereigns of the island.' . . .
>
> As most writers speak of occupation, does

that mean that sedentary fisheries are quite different in character from other fisheries?

> Sedentary fisheries, says Fulton, p. 697, 'have always been considered on a different footing from fisheries for floating fish . . . they are looked upon rather as belonging to the soil or bed of the sea than to the sea itself. This is recognized in municipal law, and Internationl Law also recognizes in certain cases a claim to such fisheries when they extend along the soil under the sea beyond the ordinary territorial limit.' "

Comment on this subject is made by Colombos in his "Internationl Law of the Sea", page 306-7, as follows:

> "Sir Cecil Hurst, in a remarkable article already referred to, concluded that such claims are valid provided they conform to certain conditions, namely (i) the coastal State must have exercised effective occupation of, and jurisdiction over, the sedentary fisheries on the sea-bed for a long period; (ii) there must be no interference with freedom of navigation in the waters above the sea-bed; and (iii) there must be no interference with the right to catch swimming fish in the waters above the sea-bed. In their comments on the Revised Draft Articles on the continental shelf prepared by the International Law Commission in 1951, the British Government stated that they considered Sir Cecil Hurst's article as correctly stating the law on sedentary fisheries and that they were in entire agreement with the author's conclusion that 'the claim to the exclusive ownership of a portion of the bed of the sea and to the

wealth which it produces in the form of pearl, oysters, chanks, coral, sponges or other fructus of the soil is not inconsistent with the universal right of navigation in the open sea or with the common right of the public to fish in the high seas.' The drafting of article 3 by the International Law Commission seems to be in accordance with the above conclusions. . ."[32]

As this Court said in *Louisiana v. Mississippi*, 202 U. S. 1, 52, 50 L.Ed. 931:

> "The maritime belt is that part of the sea which, in contradistinction to the open sea, is under the sway of the riparian states, which can exclusively reserve the fishery within their respective maritime belts for their own citizens, whether fish or pearls, or amber, or other products of the sea. See Manchester v. Massachusetts, 139 US 240, 35 L.Ed. 159, 11 S.Ct. Rep. 559; McCready v. Virginia, 94 US 391, 24 L.Ed. 248."

The Court in this case, in referring to the riparian state's exclusive rights in the sea, was specifically referring to Louisiana — and not the United States. An extension of the maritime belt for any purpose, and particularly with respect to natural resources, would consequently inure to the benefit of this state.

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[32]See also: 2 Hackworth's Digest of International Law 672-680.

F. PRIOR TO THE PRESIDENTIAL PROCLAMATION OF 1945 AND THE SUBMERGED LANDS ACT AND OUTER CONTINENTAL SHELF LANDS ACT OF 1953, THE UNITED STATES HAS CONSISTENTLY APPROVED STATE OWNERSHIP OF A THREE LEAGUE BELT IN THE GULF OF MEXICO

As an alternative to its claim to ownership of the sub-soil and minerals under the entire Continental Shelf-boundaries co-extensive with those of the United States-Louisiana insists that its boundaries must be at least three leagues from its coast in the Gulf of Mexico. (Answer p. 21-24)

The State says that if its southern boundary, the Gulf of Mexico "including all islands within three leagues of the coast", is not a land boundary which includes by necessary implication, and as any attribute of State sovereignty, the historic boundaries of the Territory of Orleans incorporated into the Union as the State of Louisiana, that is, "the seas, ports, bays, and adjacent straits comprised in the extent of said Louisiana . . . along the River Mississippi — as far as its mouth in the sea or Gulf of Mexico about the 27th degree of the elevation of the North Pole", then this southern boundary is a water boundary extending seaward three leagues into the Gulf. The Supreme Court has in fact held that this seaward boundary of Louisiana is a water boundary. (Louisiana v. Mississippi, 202 U.S. 1, 50, 53, 50 L.Ed. 913, 932) Although the United States was not a party to the case just cited, it

is bound by the Court's opinion and decree as to the location of Louisiana's boundary.[33]

Although the Department of State of the United States has on several occasions asserted that three miles is the extreme limit that any nation may claim sovereignty over the adjoining sea, and there are Court decisions which state this to be a rule of international law, accepted by some nations, the so-called rule has been applied only to the Atlantic and Pacific shores of this nation, and it was not an accepted rule in the United States when Louisiana became a State of the Union in 1812. *It is most significant that a three mile limit has never been applied to coastal States bordering on the Gulf of Mexico* by the United States or any other nation.

On the contrary the United States has at all times prior to its claim to the entire Continental Shelf recognized the fact that *sovereignty over the marginal belt in the Gulf of Mexico extends three leagues into the sea*, and has never asserted that State ownership consists of any lesser width or extent in this Gulf.

Treaties and declarations to this effect have been made by the United States over a long period of time, and include among others the following:

Treaty with Spain of February 22, 1819, 8 Stat. 252,

[33]Florida v. Georgia, 17 How. 478, 15 L.Ed. 181
49 Am. Jur. 247 - Note 6.

Treaty with Mexico of January 12, 1828, 8 Stat. 372,

Resolution of Congress recognizing independence of Texas, March 1, 1837, Cong. Globe, 24th Cong. 2d Sess. 270,

Convention for Marking Boundary Between the U.S. and Texas, April 25, 1838. 4 Miller's Treaties 133, notes pages 135-136,

Joint Resolution of Congress annexing State of Texas, March 1, 1845, 5 Stat. 797,

Treaty of Guadalupe Hidalgo between the United States and Mexico, February 2, 1848, 9 Stat. 922, 923,

Gadsden Treaty with Mexico, December 30, 1853, Cong. Globe, 33rd Cong. 1st Sess. 1568, 10 Stat. 1031.

Act of Congress approving the Constitution of the State of Florida, February 25, 1868, 15 Stat. 73.

The above described treaties with the Republic of Mexico in which the parties agreed that the boundaries of the respective nations extended three leagues into the Gulf of Mexico have been reaffirmed and readopted on numerous occasion, including Boundary Conventions of 1882, 1889, and 1905. Similar recognition of Mexico's three league limit was made in 1936. See Hackworth's Digest of International Law, Vol. 1, page 639-642.

Said treaties and conventions fixing the boundaries of the coastal states in the Gulf of Mexico three

leagues seaward have been accepted by the family of nations and specifically recognized by the great maritime nations of the world since Louisiana was admitted to the Union in 1812.

Spain and the United States fixed their corner at the mouth of the Sabine River in the sea by their Treaty of Limits in 1819. This Treaty was the basis for the fixing of this corner at the mouth of the Sabine "three leagues from land" in the Boundary Convention between the United States and the Republic of Texas in 1838. (See U.S. v. Texas, 162 U.S. 1, 31-32, 40 L.Ed. 867, 876-7)

The notes appended to the convention for marking the boundary between the United States and Texas signed April 25, 1838, 4 Miller's Treaties, pages 135 and 136, show that the earlier treaties made by this nation with Spain and with Mexico constituted the basis for the international boundary extending three leagues into the Gulf of Mexico at the mouth of the Rio Grande.

> "Each of the two Governments from the beginning of their relations regarded the boundary fixed by the earlier treaties of the United States with Spain and with Mexico (Treaties of 1819 and 1828) (Documents 41 and 60) as binding, so far as concerned the line between the United States and the Republic of Texas. The Government of the United States was so informed by the representatives of Texas as early as January 11, 1837 (Garrison, Diplomatic Correspondence of Texas pt. 1, 175); the attitude of that Govern-

ment at no time varied in that regard (ibid., 232, 279, 295); indeed, the Government of Texas appointed a commissioner to run the line accordingly (ibid., 252, August 4, 1837; 279, December 31, 1837). The boundaries of Texas, as claimed by that Government, were thus described in the instructions of March 21, 1838, from R. A. Irion, Secretary of State of Texas, to Memucan Hunt (ibid., 318-20):

> The present boundaries of Texas as fixed by an act of Congress are as follows, viz.—Beginning at the mouth of the Sabine River and running west along the Gulf of Mexico three leagues from land to the mouth of the Rio Grande. . .' "

The idea of a three league belt of territorial waters which appears in all of the earlier negotiations of the United States with Great Britain and France, and which was approved in this nation's treaties with Spain, Mexico and Texas was undoubtedly suggested and influenced by the writings of Georg Friedrich von Martens, who wrote a Latin Treatise on the Law of Nations in 1785. He later published a new work in 1789 in French and a German edition in 1796. The French edition was translated into English by William Cobbett in 1795 and published in Philadelphia. As the translator stated in the second edition, von Martens' work was subscribed for by all members of the Congress of the United States. In that translation the following statement is made:

> "A custom, generally acknowledged, extends the authority of the possessor of the coast to a

cannon shot from the shore; that is to say, three leagues from the shore, and this distance is the least, that a nation ought now to claim, as the extent of its dominions of the seas."

A footnote for Martens' German edition of 1796, page 46, reads as follows:

"Pfeffel in Principles du droit naturel, bk. 3, Chap. iv, sec. 15, indicates the distance of three leagues as the now universal principle. This principal is now incorporated in many treaties even though no cannon reaches that far, especially over the sea.' "

Riesenfeld, in his "Protection of Coastal Fisheries", page 29, says of Martens:

"It is probably no exaggeration to state that G. F. von Martens gave the theory of international law a new direction. He was the great model of all continental writers in the century which followed the appearance of the first French and German edition of his work. Rivier calls him in his well-known 'Esquisse d'une histoire litteraire des gens depuis Grotius jusqu'a nos jours', the true originator of the systematic and scientific study of the positive law of nations."

In the 1802 London edition of Cobbett's English translation the following advertisement is printed (p. v):

"A French copy of this work was received in America in the year 1794. It came into the hands of the government, who, impressed with a high opinion of its utility, were very anxious that

> it should obtain a general circulation, for which purpose it was necessary that it should be translated into English, a task which it happened to fall to my lot to discharge. The translation met with great success. The President, the Vice-President, and every member of the Congress became subscribers to it; and, I believe, there are few law-libraries in the United States, in which it is not to be found . . ."

The Treaty of Guadalupe Hidalgo signed on February 2, 1848 describes the boundary line between the United States and Mexico in Article V which reads in part as follows: (9 Stat. 922, 926)

> "The boundary line between the two Republics shall commence in the Gulf of Mexico three leagues from land, opposite the Mouth of the Rio Grande."

In the debates in the Senate on the ratification of this Treaty no question was raised as to the validity of that portion of the boundary commencing "in the Gulf of Mexico, three leagues from land." This Treaty was ratified by the Senate on March 10, 1845.

The United States again fixed its boundary with Mexico in the Gadsden Treaty which was concluded on December 30, 1853. Article I of this Treaty provides (10 Stat. 1031):

> "The limits between the two Republics shall be as follows:
>
> Beginning in the Gulf of Mexico three leagues from land opposite the Mouth of the Rio Grande,

as provided in the 5th Article of the Treaty of Guadalupe Hidalgo."

The official report of the marking of this boundary prepared for the Department of Interior states:

> "Lt. Wilkinson, in command of the Brig Morris, repaired at the appointed time to the Mouth of the River and made soundings . . . to trace the boundary as the treaty required, 'three leagues out to sea'".[34]

This three league line was surveyed again and agreed upon as the international boundary between the United States and Mexico in 1911. The international boundary line extending three leagues into the Gulf of Mexico is shown on Map Sheets 29 and 30 of "Department of State—Proceedings of the International Boundary Commission United States and Mexico —Joint Report of the Consulting Engineers on Field Operations of 1910-1911. American Section". (Dept. of State, 1913). Defendants Map Appendix contains these map sheets showing this three league International Boundary.

A fairly complete discussion of the establishment of the United States boundary 3 leagues into the Gulf of Mexico can be found in the case of *Amaya v. Stanolind Oil and Gas Company*, 62 Fed Sup. 181, et seq., 158 F. 2d 554.

On August 30, 1935 Mexico amended Section 1 of Article IV of its Law of Immovable Properties of the

[34]1 Emory, Report of the United States and Mexican Boundary Survey (Washington, 1857) p. 58.

Nation so as to state that the territorial waters should extend to a distance of nine nautical miles counted from the mark of the lowest tide on the coast of the mainland or on the shores of the islands forming part of the national territory. The Department of State of the United States protested under date of March 7, 1936 and was reminded by the Mexican Foreign Office that the territorial waters of Mexico as well as those of the United States had been fixed by the Treaty of Guadalupe Hidalgo at nine nautical miles. The Department of State reply on May 23, 1936 stated that the *treaty only fixed this as a boundary in the Gulf of Mexico* and that its protest was directed at the extension of the Mexican territorial waters into the Pacific Ocean. In effect the Department of State admitted that the territorial waters of the United States and of Mexico extended three leagues into the Gulf.[35]

The United States was the first nation which officially recognized the independence of the Republic of Texas. In a special message to Congress on December 22, 1836 President Jackson indicated in the following language that the United States in recognizing Texas' independence was also recognizing its territorial claims:

> "The title of Texas to the territory sea claims is identified with her independence."[36]

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[35]1 Hackworth Digest of International Law 639-641.

[36]Congressional Globe, 24th Cong. 2nd Sess. 45.

United States Senate on March 1, 1837 adopted a Resolution recognizing the independence of Texas.[37] Senator Walker, the author of the Resolution, in a speech in the Senate on May 21, 1844, said:

> "As the author of the Resolution, before it was adopted, I read to the Senate the Boundaries of Texas, as described in her Organic Law, claiming it also *as the ancient boundaries of Louisiana;* and with the full knowledge of these facts, the Resolution was adopted." (See App. Cong. Globe 28 Cong. 1st Sess 549)

On September 25, 1839, the Treaty of Amity Commerce and Navigation was made between the Republic of Texas and France in which the territorial claims of Texas were recognized. A similar treaty was made by Texas with the Netherlands on September 18, 1840, and on November 13, 1840 such a treaty was concluded between Texas and Great Britain.[38]

It would therefore appear that as a matter of international law a boundary not less than three leagues in the Gulf of Mexico was recognized in the family of nations during the early part of the 19th Century. Apparently no objection has been offered with respect to the three league claim of Texas in the Gulf of Mexico, nor was any objection offered by any nation when Florida's boundaries were declared to be five leagues in the Gulf of Mexico in its Constitution of 1868, which

[37]Congressional Globe, 24th Cong. 2nd Sess. 270.

[38]2 Gammel's Laws of Texas 655, 880, 905.

limit was subsequently reduced to three leagues in the Florida Constitution of 1885.[39] The Florida Constitution of 1868 was approved by United States Congress.[40]

If the boundary between the United States and Spain in 1819, between the United States and Mexico in 1828, and between the United States and Texas in 1838, was three leagues offshore in the Gulf of Mexico and if the boundary of the United States with Mexico was fixed three leagues in the Gulf by various Treaties since, is it reasonable to say that on these dates, or subsequently, the southwest corner of Louisiana was less than three leagues offshore? It would therefore follow that these boundary agreements with Spain, Mexico and Texas explain the meaning of the Act of Admission of Louisiana to the Union wherein its boundary on the Gulf includes "all islands within three leagues of the coast".

1. Equality and Uniformity Require that Louisiana's Boundary in the Gulf of Mexico Be No Less Extensive Than Those of Other Gulf Coastal States.

In the 1950 Tidelands decision, *United States v. Texas*, 339 U. S. 707, 715-716, 94 L.Ed. 1221, 1226 the Supreme Court ruled that the State of Texas owned nothing beyond low-water mark in the Gulf of Mexico although the Treaty of Annexation whereby Texas joined the Union obligated the United States to recog-

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[39] Thorpe's American Charters, Constitutions and Organic Laws, Vol. 2, p. 706, 734.

[40] 15 Stat. 73.

nize its three league boundary into the Sea. The Court justified this conclusion by saying:

> "We are of the view that the 'equal footing' clause of the Joint Resolution annexing Texas to the Union disposes of the present phase of the controversy.
>
> The 'equal footing' clause has long been held to refer to political rights and to sovereignty. See Stearns v. Minnesota, 179 US 223, 245. It does not, of course, include economic stature or standing. There has never been equality among the States in that sense. * * * The requirement of equal footing was designed not to wipe out those diversities but to create parity as respects political standing and sovereignty.
>
> *Yet the 'equal footing' clause has long been held to have a direct effect on certain property rights.*
>
> . . . The 'equal footing' clause prevents extension of the sovereignty of a State into a domain of political and sovereign power of the United States from which the other States have been excluded, just as it prevents a contraction of sovereignty (Pollard's Lessee v. Hagan, supra) which would produce inequality among the States. For equality of States means that they are not 'less or greater, or different in dignity or power.' See Coyle v. Oklahoma, 221 US 559, 566."

So the equality rule works in reverse here. If Texas and Florida are to have boundaries extending three leagues into the Gulf then the other Gulf coastal

states including Louisiana must be placed on the same "equal footing". If the United States can recognize a three league limit for Mexico, Texas and Florida whose coast lines include more than 80 per cent of the Gulf's perimeter, it can hardly be considered equal treatment for Louisiana to be limited to three miles.

The Submerged Lands Act uniformly recognizes the principle that "in different seas and on different coasts, a wider or more contracted range in which to exercise the vigilance of the government, will be assented to".[41] In accordance with the authority just quoted, the Submerged Lands Act makes a classification, or grouping of States, which relates to the seas upon which their coasts are located. On strictly inland seas, such as the Great Lakes, a wide marginal belt is recognized, whereas on the greatest of all international highways, the Atlantic and Pacific Oceans, where international conflicts are most likely to occur, the most restricted belts are located.

Thus the Act provides that all states bordering the Great Lakes may extend their boundaries to the International Boundary that runs down the middle of these inland seas. Lake Huron has an average width of 155 miles, so the States bordering on Lake Huron extend seaward an average of more than 77 miles. The Submerged Lands Act uniformly provides a seaward limit of three miles for all States bordering on the At-

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[41]Church v. Hubbart, 2 Cranch 187, 234-5, 2 L.Ed. 249,

lantic and the Pacific Oceans. It sets a limit of three leagues in the Gulf of Mexico. Louisiana is entitled to at least that much.

G. THE UNITED STATES HAS RECOGNIZED A THREE LEAGUE MARGINAL BELT

In the California Case (332 U. S. 19, 32) the opinion states that "when this nation was formed, the idea of a three mile belt over which a littoral nation could exercise rights of ownership was but a nebulous suggestion." This is a correct statement in so far as the so-called three mile rule is concerned, because this idea did not take definite form until sometime later in the 19th century. However, all the text writers on International Law and all of the treaties defining territorial limits on the American Continent have recognized State sovereignty over submerged lands in the sea, but at greater distances from the shores or the coasts than three miles.

Thus the Continental Congress authorized the capture of any ship carrying British goods "if found within three leagues of the coasts."[42]

In August of 1779 the Continental Congress passed a Resolution relating to negotiations for peace with Great Britain. A paragraph of this Resolution is quoted from the Journals of the Continental Congress, Volume XIV, 1779, page 922:

"RESOLVED, that the faith of Congress be

[42]Journal of the Continental Congress, 1781, pages 185, 186, 187.

pledged to the several states that without their unanimous consent, no treaty of commerce shall be entered into, nor any trade or commerce whatsoever carried on with Great Britain, without an explicit stipulation on her part not to molest or disturb the inhabitants of the United States of America in taking fish on the banks of Newfoundland and other fisheries in the American seas anywhere, excepting within the distance of three leagues of the shores of the territories remaining to Great Britain at the close of the war, if a nearer distance cannot be obtained by negotiation."

In the records of the Continental Congress of August, 1782, the instructions to the United States Ministers are recorded regarding the position to be taken by the United States in negotiations for the Peace Treaties which were to be considered between this nation, Great Britain and France. The following statement appears in those instructions:

"Another claim is the common right of the United States to take fish in the North American seas, and particularly on the Banks of Newfoundland. With respect to this object, the said ministers are instructed to consider and contend for it, as described in the instructions relative to a treaty of commerce, given to John Adams on the 29th of September, 1779. They are also instructed to observe to his most Christian Majesty, with respect to this claim, that it does not extend to any parts of the sea lying within three leagues of the shores held by Great Britian or any other nation. That, under this limitation, it is conceived by Congress a common right of taking fish cannot be denied

to them without a manifest violation of the freedom of the seas, as established by the law of nations and the dictates of reason; according to both which the use of the sea, except such parts thereof as lies in the vicinity of the shore and are deemed appurtenant thereto, is common to all nations, those only excepted who have either by positive convention, or by long and silent acquiescence under exclusion, renounced that common right; that neither of these exceptions militate against the claim of the United States, since it does not extend to the vicinity of the shore, and since they are so far from having either expressly or tacitly renounced their right, that they were prior to the war, though indeed not in the character of an independent nation, in the constant, and even during the war, in the occasional exercise of it; that although a greater space than three leagues has in some instances been, both by public treaties and by custom, annexed to the shore as part of the same dominion, yet, as it is the present aim of the maritime Powers to circumscribe, as far as reason will justify, all exclusive pretensions to the sea, and as that is the distance specified in a treaty to which both Great Britain and his Majesty are parties, and which relates to the very object in question, it was supposed that no other distance could, in the present case, be more properly assumed; that if a greater or an indefinite distance should be alleged to be appurtenant by the law of nations to the shore, it may be answered that the fisheries in question, even those on the Banks of Newfoundland, being of so vast an extent, might with much greater reason be deemed appurtenant to the

whole continent of North America than to the inconsiderable portion of it held by Great Britain. . ."[43]

When the United States was negotiating for its treaty of independence with Great Britain in 1783 Congress instructed the negotiators to require an explicit recognition of American fishing rights in the American seas "excepting within the distance of three leagues of the Shores of the Territory remaining to Great Britain at the close of the war, if a nearer distance cannot be obtained by negotiation."[44] The American negotiators, however, through their skillful diplomacy succeeded in obtaining for the United States fishing privileges in all waters belonging to Great Britain on the Canadian coast when the Peace Treaty of September 3, 1783 was concluded (See Article III). Comment upon this subject was made by President Madison to Mr. Adams by a letter addressed to the latter on December 17, 1814, in which the President said:

"It appears from one of your letters . . . that the original views of Congress did not carry their

[43]Crocker, "The Extent of the Marginal Seas", p. 630. American State Papers, 2nd Series, Vol. 6, pages 871-873.

[44]Journals of the Continental Congress, Vols. 13 and 14, reprinted in proceedings in the North Atlantic Coast Fisheries Arbitration, Vol. 7, App. p. 38.

See also the letter of Mr. Adams to Mr. Livingston of February 5, 1783, reprinted in the Appendix to these proceedings at page 190.

ultimatum beyond the common right to fish in waters distant 3 leagues from the Britist shores. The negotiations, therefore, and not the instructions . . . have the merit of the terms actually obtained."[45]

In 1793 Secretary of State Jefferson, in letters written to the diplomatic representatives of France and Great Britain, stated that one sea league was the smallest limit of territorial waters which had been recognized and that the character of the American coast would entitle us to a broader margin of protected navigation. In this letter he wrote:

"You are sensible that very different opinions and claims have been heretofore advanced on this subject. The greatest distance to which any respectable assent among nations has been at any time given, has been the extent of the human sight, estimated at upwards of 20 miles, and the smallest distance I believe, claimed by any nation whatever is the utmost range of a cannon ball, usually stated at one sea league. Some intermediate distances have also been insisted on, and that of three sea leagues has some authority in its favor. The character of our coast, remarkable in considerable parts of it for admitting no vessels of size to pass near the shores, would entitle us in reason to as broad a margin of protected navigation as any nation whatever. Reserving however the ultimate extent of this for future deliberation the President gives instructions to

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[45]Appendix Volume 7, p. 226, Proceedings in the North Atlantic Coast Fisheries Arbitration.

> the officers acting under his authority to consider those heretofore given them as restrained for the present to the distance of one sea league or three geographical miles from the sea shores."[46]

An Act of Congress of February 18, 1793 for enrolling and licensing fishing vessels established jurisdiction over such licensed ships within three leagues.[47]

On May 15, 1793 Thomas Jefferson as Secretary of State forwarded to the French Minister an opinion on the seizure of the ship "Grange" in which the Attorney General stated:

> "The necessary or natural law of nations. . . will, perhaps, when combined with the Treaty of Paris in 1783 justify us in attaching to our coasts an extent into the sea beyond the reach of cannon shot."[48]

In a note of May 17, 1800 Secretary of State Madison suggested negotiations with Great Britain for an agreement restraining captures "within the distance of four leagues from the shore", and "if the dis-

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[46]Letter from Mr. Jefferson (U. S. Secretary of State) to to Mr. Genet (Minister of France) of November 8, 1793, reprinted in Proceedings in the North Atlantic Coast Fisheries Arbitration, Vol. 4, App. p. 96

Letter from Mr. Jefferson (U. S. Secretary of State) to Mr. Hammond (British Minister at Philadelphia) of November 8, 1793, reprinted ibid, Vol 4, App. p. 97.

[47]1 Stat. 305, 314.

[48]American State Papers, Class I, Foreign Relations, Vol. 1, p. 147.

tance of four leagues cannot be obtained, any distance not less than one sea league may be substituted."[49] This language was repeated in his instructions of May 17, 1806.[50]

On November 30, 1805 President Jefferson stated that assent was given to a limit of 3 miles in 1793 because "we were not then prepared to assert the claim of jurisdiction to the extent we are in reason entitled to" and that the matter had been reserved "for future consideration."

On December 3, 1805 Thomas Jefferson in his 5th annual message to Congress made the following report:

> "Since our last meeting the aspect of our foreign relations has considerably changed. Our coasts have been infested and our harbours watched by private armed vessels, some of them without Commissions, some with illegal commission, others with those of legal form, but committing piratical acts beyond the authority of their commission. They have captured in the very entrance of our harbours, as well as in the high seas, not only the vessels of our friends coming to trade with us, but our own also . . . I found it necessary to equip a force to cruise within our own seas, to arrest all vessels of these descriptions found hovering on our coasts within the limits of the Gulf

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[49]Crocker, "The Extent of the Marginal Seas," p. 639.

[50]3 American State Papers, p. 122.

Stream and to bring the offenders in for trial as pirates.

The same system of hovering on our coasts and harbours under color of seeking enemies has also been carried on by public armed ships to the great annoyance and oppression of our commerce. New principles too have been interpreted into the law of nations, founded neither in Justice nor the usage or acknowledgement of nations. According to these a belligerent takes to itself a commerce with its own enemy which it denies to a neutral on the ground of its aiding that enemy in the war; . . . "[51]

The foregoing message had particular reference to some incidents which had occurred off the coast of South Carolina. The map of the Gulf of Mexico which is contained in the map appendix filed with this brief shows that the Gulf stream off the coast of South Carolina begins at a distance of approximately 90 miles offshore from the southern boundary of this State and extends approximately 150 miles offshore at the northern boundary. The distance offshore increases as the Gulf stream proceeds northeasterly across the Atlantic Ocean.

The attitude of the United States toward a limitation of its maritime belt is discussed in Kent's Com-

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[51]"Abridgment of the Debates of Congress" (1857) Vol. III p. 346

Messages and Papers of the President, Vol. 1, p. 383-4.

mentaries (12th Ed) Vol. 1, pages 30, 31, as follows:

" . . . (c) The executive authority of this country, in 1793, considered the whole of Delaware Bay to be within our territorial jurisdiction; and it rested its claims upon those authorities which admit that gulfs, channels, and arms of the sea, belong to the people with whose lands they are encompassed. It was intimated that the law of nations would justify the United States in attaching to their coasts an extent into the sea beyond the reach of cannon-shot.

Considering the great extent of the line of the American coasts, we have a right to claim, for fiscal and defensive regulations, a liberal extension of maritime jurisdiction; and it would not be unreasonable, as I apprehend, to assume, for domestic purposes connected with our safety and welfare, the control of the waters on our coasts, though included within lines stretching from quite distant headlands, as, for instance, from Cape Ann to Cape Cod, and from Nantucket to Montauk Point, and from that point to the capes of the Delaware, and from the south cape of Florida to the Mississippi . . . In 1793, our government thought they were entitled, in reason, to as broad a margin of protected navigation as any nation whatever, though at that time they did not positively insist beyond the distance of a marine league from the sea-shores; (a) and, in 1806, our government thought it would not be unreasonable, considering the extent of the United States, the shoalness of their coast, and the natural indication furnished by the well-defined path of the Gulf stream, to expect an immunity from bellig-

> erent warfare, for the space between that limit and the American shore. It ought, at least, to be insisted, that the extent of the neutral immunity should correspond with the claims maintained by Great Britain around her own territory, and that no belligerent right should be exercised within 'the chambers formed by headlands, or anywhere at sea within the distance of four leagues, or from a straight line from one headland to another."

The same author discusses both the British and the American Acts regarding the interception of foreign goods within 4 leagues of the coast on page 32 as follows:

> . . . "The statute 9 Geo. II. c. 35, prohibited foreign goods to be transshipped within four leagues of the coast without payment of duties; and the act of Congress of March 2d, 1799, c. 128, sec. 25, 26, 27, 99, contained the same prohibition; and the exercise of jurisdiction, to that distance, for the safety and protection of the revenue laws, was declared by the Supreme Court in Church v. Hubbart, (d) to be conformable to the laws and usages of nations."

Toward the middle of the 19th Century as the United States and Great Britain increased in naval power they agreed in some instances to a limitation of territorial waters to three marine miles, but this limit was not uniformly applied. As shown in a proceeding section of this brief the United States has consistently recognized a three league limit in the Gulf of Mexico until the year 1945 when the President proclaimed that the entire Continental Shelf on all the

coasts of the United States appertained to the coastal states and was subject to the jurisdiction and control of the United States insofar as the seabed, subsoil, and the natural resources of the Shelf were concerned.

H. LOUISIANA ACT 33 OF 1954 DEFINES THE STATE'S COAST LINE IN ACCORDANCE WITH APPLICABLE ACTS OF CONGRESS

1. The Louisiana Coast Has Been Defined Pursuant to Acts of Congress As the Line Dividing Inland Waters From the Open Sea.

In the event that the Court should hold that the United States owns a belt of land surrounding the territory of the coastal States wherein the States own no proprietary rights, and refuses to sustain Louisiana's claim set forth hereinabove, then, pleading in the alternative, Louisiana shows that Act 33 of 1954 passed by its Legislature correctly designates the State's coast line in accordance with applicable Acts of Congress. In its third defense (Answer p. 17, et seq) Louisiana says that its boundaries extend to a line three leagues seaward of the line of demarcation between its inland waters and the open sea, said line having been established by the Act of Congress of February 19, 1895 as hereinafter shown.

By Act of Congress, approved February 10, 1807 by Thomas Jefferson as President, the Chief Executive of the United States was authorized and requested to cause a survey to be made of the coasts of the United

States within twenty leagues of any part of the *shores* of the United States.

The Act of Congress of April 8, 1812 admitting Louisiana to the Union described its southeasterly and southern limits as "the Gulf of Mexico" including all islands within three leagues of the *coast.*" (2 Stat. 701, 702).

When Congress defined Louisiana's boundary in the Act of its admission into the Union as being three leagues from coast, into the Gulf of Mexico, Congress must be taken to have intended that the three league boundary line into the Gulf was from the coast line to be designated and defined by the agency of the federal government provided by said Act of Congress of February 10, 1807.

By Section 2 of the Act approved February 19, 1895[52] Congress provided authority in the Secretary of Commerce to designate and define "the line dividing the high seas from rivers, harbors, and inland waters."

In 1896 the Supreme Court held, that pursuant to the authority of the 1895 Act of Congress, the Secretary of Commerce by Department Circular 95 on May 10, 1895, "designated and defined the dividing line between the high seas and the rivers, harbors and inland waters of New York", and that the waters inside of that coast were "as much a part of the inland

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[52]28 Stat. 672, 33 U.S.C. 1351.

waters of the United States within the meaning of this Act as the harbor within the entrance" to the New York Harbor.[53]

This refutes the contention made by some that the coast line fixed under these Acts of Congress is for navigation purposes only. Fact is, the inland rules of navigation apply to navigation over inland waters because of the character of said waters as "inland waters." But, said waters are not "inland" because inland rules of navigation apply thereupon.

In 1946, Congress, by Sec. 101 of Reorganization Plan No. 3 (11 F. R. 7875), vested authority in the Commandant of the Coast Guard to designate and define the coast line under Sec. 2 of the Act of February 19, 1895.

By virtue of this authority the Commandant of the Coast Guard promulgated existing regulations that had been adopted by his predecessors under said Act "to establish the lines dividing the high seas from the rivers, harbors, and inland waters in accordance with the intent of the statute and to obtain its correct and uniform administration."

The regulations fix the *Boundary Lines of Inland Waters*, and provide that the waters inshore of the lines described are "inland waters" and the waters outside of the lines described are the high seas. CG-

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[53]The Delaware, 161 U.S. 459, 463, 40 L.Ed. 771, 773.

169, March 1, 1955, Part 82-Boundary Lines of Inland Water, Sec. 82.1.

Sec. 82.95 and 82.103 designate and define the coast line or outer boundary of the inland waters from Mobile, Alabama to Sabine Pass, Texas. These regulations define the inland waters as they had been marked and surveyed during the 19th Century as required by the Acts of Congress referred to above.

This coast line, including that of the State of Louisiana, is shown on a map prepared by the Commandant of the Coast Guard, and this coast line, so designated and defined in accordance with applicable Acts of Congress, was accepted and approved by the Louisiana Legislature by Act No. 33 of 1954, as follows:

> "From Ship Island Lighthouse to Chandeleur Lighthouse; thence in a curved line following the general trend of the seaward, high-water shore lines of the Chandeleur Islands to the Southwestern most extermity of Errol Shoal; thence to Pass-a-Loutre Lighted Whistle Buoy 4 to South Pass Lighted Whistle Buoy 2; thence to Southwest Pass entrance Midchannel Lighted Whistle Buoy; thence to Ship Shoal Lighthouse; thence to Calcasieu Pass Lighted Whistle Buoy 1; thence to Sabine Pass Lighted Whistle Buoy 1."

These boundaries are shown on a map attached to and made a part of the 1954 Act of the Louisiana Legislature, and also appear on U.S. Coast and Geodetic Survey Charts 1115 and 1116 (See Map Appendix hereto).

Under specific provisions of the 1807 and 1895

Acts of Congress as amended, and the decisions of the Supreme Court, all of the waters inside of said coast line, therefore, are "as much a part of the inland waters" within the meaning of the Act as the New Orleans harbor.

By said Act 33 of 1954, Louisiana's historic gulfward boundary was simply restated as extending a a distance into the Gulf of Mexico 3 marine leagues from said coast line.

Attention is directed to the fact that the Submerged Lands Act of May 22, 1953 recognized State ownership and quit claimed whatever right, title and interest which the United States had, if any, in and to all lands beneath navigable waters and natural resources within the seaward boundaries of a State in the Gulf of Mexico as they existed at the time such State became a member of the Union, but in no event, (Section 2b) "Shall the term 'boundaries' or the term 'lands' beneath navigable waters' be interpreted as extending from the coast line * * * more than three marine leagues into the Gulf of Mexico."

That provision "three marine leagues into the Gulf of Mexico" from the coast line applies specifically to the State of Louisiana because it is only the State of Louisiana which has a boundary *three leagues from coast* into the Gulf as existed at the time it became a member of the Union. Act of Congress approved April 8, 1812, 2 Stat. 701, 702.

The other Gulf coastal States are Texas, Mississippi, Alabama and Florida.

The Texas boundary is " . . . *three leagues from*

land" into the Gulf of Mexico. Act of December 19, 1836 by the Congress of the Republic of Texas.

The Mississippi boundary is "... *six leagues of the shore*" into the Gulf of Mexico, as defined by the Act of Congress of March 1, 1817.

The Alabama boundary is "*6 leagues of the shore*" into the Gulf of Mexico, as defined in the Acts of Congress of March 3, 1817, and March 2, 1819.

The Florida boundary is "... *five leagues from the shore*" into the Gulf of Mexico as fixed by its 1868 Constitution, accepted by Congress when reinstating the State of Florida.

Therefore, the fact that the 1953 Submerged Lands Act of Congress recognized and established title to the Gulf coastal states within a maximum distance of *three leagues from coast* into the Gulf of Mexico and that Louisiana is the only State which has a gulfward boundary *three leagues from coast* leaves only one conclusion: that provision is particularly applicable to the State of Louisiana.

The coast line adopted by the 1954 Act of the Louisiana Legislature is in accord with the Submerged Lands Act which thus defines "coast line":[54]

> "The term 'coast line' means the line of ordinary low-water along that portion of the coast which is in direct contact with the open sea and

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[54]Title I Sec. 2 (c), 67 Stat. 29, 43 U.S.C. 1301 (b).

the line marking the seaward limit of inland waters."

The Act of February 19, 1895[55] authorized and directed the establishment of the "lines dividing the high seas from rivers, harbors and inland waters" and this line, as above described has accordingly been adopted by the Legislature in 1954 as its "coast line".

Further support for the adoption of this line as Louisiana's coast line is found in a Congressional Act of July 17, 1939[56] which declared that "the term 'high seas' means all waters outside the line dividing the inland waters from the high seas, as defined in Section 151 of Title 33" (the Act of February 19, 1895).

The Supreme Court interpreting an Act of March 12, 1863 relating to captured and abandoned property has defined "Inland Waters" to apply to "all waters of the United States upon which a naval vessel could go, other than bays, and harbors on the sea coast.[57]

Because of the unusually shallow depth of the waters of the Gulf along the extent of Louisiana's seacoast, and the existence of many shoals[58] and reefs

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[55]28 Stat. 672, Sec. 2, 33 U.S.C. 151.

[56]53 Stat. 1049, 46 U.S.C. 224 a (12).

[57]U. S. v. The Steam Vessels of War, 106 U.S. 607, 612, 27 L.Ed. 286, 287.

[58]A shoal or reef is defined as a part of the seabed "which comes within 6 fathoms of the surface, and so may constitute a danger to shipping." Encyclopaedia Britannica (1945 ed.) Vol. 16 p. 682.

it is not possible for sea going vessels to sail inland of the line dividing the high seas from the inland waters. This line, as fixed by the United States, traverses for the most part waters less than 6 fathoms in depth—in some instances less than 3 fathoms.

U. S. C. & G. S. Charts 1115 and 1116 contained in Defendants Map Appendix show water depths.

2. Louisiana's Coast Line and Seaward Boundary Adopted By the Legislature Accomplishes Stability and Certainty of Location

In another part of this brief relating to Louisiana's historic boundaries we called attention to a statement by a French authority on International Law, Valin, wherein he stated that "it would have been better, perhaps, to reckon the domain over the adjacent sea by the sounding lead, and to assign its limits exactly at that point where the sounding lead ceased to fetch bottom" than to measure the territorial waters as far as can be seen from the shore.

In view of the tortuous nature of Louisiana's shore line, the continuous changes that occur as a result of accretion and erosion, subsidence of land masses, and sudden changes caused by storms and hurricanes, there can be no certainty as to the location of any line along the shores of the State from year to year or even from day to day. There is a constant accretion of land in some segments and erosion of the shore in other segments. Some of these changes have occured gradually, others have occurred rapidly. Storms and hurricanes

have shifted the shore line and changed the shape of islands overnight. In a region such as this where oil and mineral exploration and development are being conducted on a grand scale, the base line for the measurement of a marginal belt cannot be a line whose location is constantly shifting. The coast line fixed by the Louisiana Legislature in accordance with the Acts of Congress, as the line dividing the inland waters from the open sea does not have this infirmity or uncertainty of location.

The "coast line of the United States" has always been measured along this line dividing the inland waters from the open sea. See: "The Public Domain" (1884), by Thomas Donaldson, printed by the Government Printing Office pursuant to Acts of Congress of March 3, 1789 and June 16, 1880, page 464, and U. S. C. & G. S. Charts 1115 and 1116 of the Gulf of Mexico in the Map Appendix to this brief.

This Court has, in at least two decisions, recognized the fact that Louisiana's coast line is a water boundary. In *Queyrouze v. U. S.*, 70 U. S. (3 Wall.) 83, 18 L.Ed. 65, the Court made mention of the fact that Ship Shoal Lighthouse is on the coast of Louisiana. This lighthouse is one of the markers "designating the lines dividing the high seas from the . . . inland waters" in accordance with the requirements of the Act of Congress of February 19, 1895, supra. In the *Queyrouze Case*, which is also entitled "The Jose

phine", the following statement is made regarding the locale of the controversy:

> "The schooner Josephine, laden with a cargo of three hundred and twenty-two bales of cotton and a lot of slaves, was captured by the United States ship of war Hatteras, George F. Emmons, Esq., captain, on the high seas, off Ship Shoal Lighthouse on the coast of Louisiana on the 28th of July, 1862 . . ."

In Mr. Chief Justice Chase's opinion he stated that the steamer Josephine "must have been coming from some point west of Ship Shoal Lighthouse, which is laid down on the coast Survey Charts as more than a 100 miles west of the Mouths of the Mississippi".

In the case of *Louisiana v. Mississippi*, 202 U. S. 1, 43, 50 L.Ed. 913, 928, the Court after quoting the enabling Act of Congress for the creation of the State of Louisiana (Act of February 20, 1811, 2 Stat. 641), declared that Louisiana's boundary on the east and south is a water boundary following the deep water sailing channel in the open sea or Gulf of Mexico. The Court said:

> "The eastern boundary thus described is a water boundary, and, in extending this water boundary to the open sea or Gulf of Mexico, we think it included the Rigolets and the deep-water sailing channel line to get around to the westward. A little over one year later Louisiana was created a state by the act of Congress of April 8, 1812, with this identical eastern boundary line;

and the addition of territory by the Act of April 14, 1812 did not affect the deep water sailing channel line as a boundary."

Earlier in its opinion (202 U. S. 36, 50 L.Ed. 925) the Court referred to maps and diagrams which are made a part of the opinion and stated:

> "Map or diagram No. 1, given in the opening statement, shows the limits as thus defined.
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> By an act of Congress approved April 14, 1812 (2 Stat at L. 708, chap. 7), additional territory was added to the State of Louisiana. This added territory is shown on map or diagram No. 2."

These diagrams very closely follow the deep sailing channel where the markers, buoys and lighthouses were placed to establish the dividing line between the inland waters of Louisiana and the open sea.

In 1938 the Legislature of Louisiana by Act 55 declared the boundaries of the State to be 27 miles seaward of its shore line. This boundary was then considered to be co-extensive with the boundaries of the United States under the theory that this nation had adopted the "cannon shot" rule fathered by the great Dutchman, Bynkersholk, at the beginning of the 18th Century. During the 19th Century this cannon shot rule developed into the so-called 3 mile rule because that was the limit of the range of cannon that could protect the marginal sea from hostile invasion. Since in 1938 our seacoast batteries had a maximum ef-

fective range of 27 miles, our legislature extended the boundaries of Louisiana to what it then believed to be the full-limit permitted by International Law.

In Louisiana's original Tidelands Case decided in 1950 (339 U. S. 699, 94 L.Ed. 1216), the Supreme Court, in commenting on Act 55 of 1938, stated that "Louisiana's enlargement of her boundary emphasizes the strength of the claim of the United States to this part of the ocean and the resources of the soil under that area, including oil." This is a correct statement to the extent that it recognizes the right of the coastal states thus to declare their boundaries as a matter of International Law, and to the extent that it emphasizes the right of the United States to extend its appropriate national jurisdiction and its federal powers enumerated in the Constitution to the full limit of the boundaries of the several states of the Union. This statement by the Court directly implies that the boundaries of the United States and of Louisiana must be co-extensive.

The United States takes the position, in its motion for judgment and in its opposition to Louisiana's motion to take depositions, that the boundaries of the State and of the nation are co-terminous; Louisiana agrees with that position.

I LOUISIANA IS ENTITLED TO FURNISH EVIDENCE IN SUPPORT OF ITS PLEAS OF ACQUIESCENCE, ESTOPPEL AND PRESCRIPTION

1. Many Equities Are Involved in This Controversy. The United States Is Subject to the Same Rules of Justice and Equity Applicable to Other Litigants.

Louisiana since her admission into the Union has at all times, and with the acquiescence of the United States, exercised governmental and proprietary rights in its Continental Shelf. Evidence on this subject will be offered by the State in the form of numerous maps, charts, records of the State Land Office, State Department of Conservation, State Mineral Board, and by the records of other State offices, and by the oral testimony of witnesses. These are facts which require a hearing since the Court will not take judical notice thereof.

There are many equities involved in this controversy, and of course, the United States is subject to the same rules of justice and equity which are applicable to other litigants. [59]

Although this Court overruled pleas of prescrip-

[59]Guaranty Trust Co. v. U. S., 304 U.S. 126, 82 L.Ed. 1224;
Lukenbach v. The Thekla, 266 U.S. 328, 69 L.Ed. 313;
U. S. v. Chaves, 159 U.S. 452, 464, 40 L.Ed. 215, 220;
Carr v. U. S., 98 U.S. 433, 25 L.Ed. 209;
Cooke v. U. S., 91 U.S. 389, 398, 23 L.Ed. 237, 243;
The Siren v. U. S., 7 Wall. 152, 19 L.Ed. 129;
Brent v. Bank, 10 Pet. 596, 614, 9 L.Ed. 547, 555;
U. S. v. Barker, 12 Wheat. 559, 6 L.Ed. 728.

tion, acquiescence and estoppel in the California case the committees of Congress questioned the justice of this ruling, saying:[60]

> "That effect of this ruling of the Court is to place the State of California in the same legal position as an individual, thereby depriving it of its status as a sovereign. It should be noted that the case of U.S. v. California was a controversy between two sovereigns, namely, the United States on the one hand and the State of California on the other, both of which occupied equal dignity as sovereigns. The sovereign rights enjoyed by the United States were in the first instance derived from the States and the sovereign powers of the United States can rise no higher or have any greater effect than that which was delegated to the Central Government by the Constitution. The committee believes that, as a matter of policy in this instance, the same equitable principles and high standards that apply between individuals, should be applied by Congress as between the National Government and the sovereign States. (See Indiana v. Kentucky, 136 US 479, 500, 10 S. Ct. 1051 (1890); U.S. v. Texas, 162 US 1, 61, 16 S. Ct. 725 (1896); New Mexico v. Texas, 275 US 279, 48 S.Ct. 126 (1927).

The statement of the Congressional Committees that the State should be treated as an equal sovereign entity in matters of this kind is supported by many

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[60]Senate Rep. No. 133, 83rd Cong. 1st Sess. p. 67. House Rep. No. 215, 83rd Cong. 1st Sess. p. 46.

opinions and rulings of this Court. The following excerpt from the opinion in *Texas v. White*, 75 U. S. (7 Wall) 700, 725, 19 L.Ed. 227, 237 is pertinent here:

> "Not only, therefore, can there be no loss of separate and independent antonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government."

Another equally compelling conclusion on this subject appears in the following excerpt from the opinion in *Wheeler v. Smith*, 50 U. S. (9 How.) 55, 78, 13, L.Ed. 44, 54:

> "When this country achieved its independence, the prerogatives of the crown devolved upon the people of the States. And this power still remains with them, except so far as they have delegated a portion of it to the federal government. The sovereign will is made known to us by legislative enactment. And to this we must look in our judicial action, instead of the prerogatives of the crown. The State, as a sovereign, is the parens patriae."

Later authorities which support the conclusions of the Congressional Committees that "the same equitable principles and high standards that apply between individuals, should be applied . . . between the Nation-

al Government and the sovereign States" are cited in the footnote below,[61] and in cases later referred to herein.

2. This Court Has Applied Long Possession and Acquiescence as Supporting Title in Actions Involving the United States as a Litigant.

This sovereignty of the State is not lost or diminished whenever a conflicting claim arises between it and the national sovereign. Presumptions of title are indulged in such a case from long continued possession and acquiescence. This is well illustrated by the Court's ruling in *New Orleans v. U.S.*, 10 Pet. 662, 722, 736-7, 9 L.Ed. 573, 596, 602 where title to a public place was conclusively presumed as belonging to a State subdivision as against the United States. The following excerpts from the opinion are pertinent:

> "The public use of this common for so great a number of years, and the general recognition of it from the time it was dedicated, in numerous private and official transactions, and the acquiescense of the French king, offered no unsatisfactory evidence of right. If a grant from the king

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[61]Re Heff, 197 U.S. 488, 505, 49 L.Ed. 848, 855
The Abby Dodge v. U. S., 223 U.S. 166, 173, 56 L.Ed. 390, 392
Osborn v. Ozlin, 310 U.S. 53, 62, 84 L.Ed. 1074, 1079
Skiriotes v. Florida, 313 U.S. 69, 77, 85 L.Ed. 1193, 1200
Parker v. Brown, 317 U.S. 341, 87 L.Ed. 315
12 U.S. Sup. Ct. Digest, p. 388 et seq.

were necessary to confirm the claim of the city, might it not be presumed under such circumstances? . . .

The government of the United States, as was well observed in the argument, is one of limited powers. It can exercise authority over no subjects except those which have been delegated to it. Congress cannot, by legislation, enlarge the federal jurisdiction, nor can it be enlarged under the treaty-making power . . .

That this common, having been dedicated to public use, was withdrawn from commerce, and from the power of the king rightfully to alien it, has already been shown; and also, that he had a limited power over it for certain purposes. Can the federal government exercise this power?. . .

It is very clear that as the treaty cannot give this power to the federal government, we must look for it in the Constitution, and that the same power must authorize a similar exercise of jurisdiction over every other quay in the United States. A statement of the case is a sufficient refutation of the argument.

Special provision is made in the Constitution for the cession of jurisdiction from the States over places where the federal government shall establish forts or other military works. And it is only in these places, or in the territories of the United States, where it can exercise a general jurisdiction.

The State of Louisiana was admitted into the Union on the same footing as the original States. Her rights of sovereignty are the same, and by

> consequence no jurisdiction of the federal government, either for purposes of police or otherwise, can be exercised over this public ground, which is not common to the United States. It belongs to the local authority to enforce the trust, and prevent what they shall deem a violation of it by the city authorities.
>
> All powers which properly appertain to sovereignty which have not been delegated to the federal government, belong to the States and the people.
>
> It is enough for this court, in deciding the matter before them, to say that in their opinion, neither the fee of the land in controversy nor the right to regulate the use, is vested in the federal government. . ."

Although defenses of laches, estoppel and prescription may not be argued by individuals against a state or the Federal Government because the sovereign is immune from such a plea, the rule is different where two sovereign powers are involved. *In Phillips v. Payne*, 92 U. S. 130, 132, 23 L.Ed. 649, the Court

> "The law of prescription applies to nations with the same effect as between individuals."[62]

Estoppel, like prescription, resting on considerations of fairness and justice, has been applied between sovereign nations. See Lauterpacht, Private Law

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[62]See also: Arkansas v. Tenn. 310 U.S. 563, 570, 84 L.Ed. 1362, 1366-7; New Mexico v. Texas, 275 U.S. 279, 298-9, 72 L.Ed. 280; U. S. v. Chaves, 159 U.S. 452, 40 L.Ed. 215, 220; Guaranty Trust v. U. S., 304 U.S. 126, 134, 82 L.Ed. 1224, 1229.

Sources and Analogies of International Law (London, 1927) 203-2-7, citing seven important international arbitration cases where estoppel was made the basis of the award.

In the case of *Maryland v. West Virginia*, 217 U. S. 1, 42, 54 L.Ed. 645, 658, this Court said.[63]

> "As said by this Court in the recent case of Indiana v. Kentucky, 136 US 479, 510, 34 L.Ed. 329, 10 S.Ct. Rep. 1051, 'it is a principle of public law, universally recognized, that long acquiescence in the possession of territory, and in the exercise of dominion and sovereign over it, is conclusive of the nation's title and rightful authority.' "

It will thus be seen that the law of nations on the subject of prescription, laches and estoppel has been applied by this Court to the sovereign States of the United States. It is equally applicable to the national sovereign.

The Supreme Court has held that acquiescence by the United States in a boundary is binding. In *Missouri v. Iowa*, 7 How. 658, 674 12 L.Ed. 861, 867 this Court said:

> ". . . And as the treaties were drawn by authority of the United States, they must be taken as recognitions, on the part of the general govern-

---

[63]See Also: Rhode Island v. Mass., 4 How. 591, 639, 11 L.Ed. 1116, 1137; Louisiana v. Miss., 202 U.S. 1, 53, 50 L. Ed. 913, 932; Indiana v. Kentucky, 136 U.S. 479, 510, 34 L.Ed. 329, 332.

ment, that the Missouri boundary and the old Indian boundary are identical. . .

. . . From these facts it is too manifest for argument to make it more so, that the United States were committed to this line when Iowa came into the Union. And, as already stated, Iowa must abide by the condition of her predecessor, and cannot now be heard to disavow the old Indian line as her true southern boundary."

In *United States v. Texas*, 162 U. S. 1, 60, 40 L.Ed. 867, 892, Mr. Justice Harlan made the following statement in the opinion of the Court:

"But it is said that the United States has in many ways, and during a very long period, recognized the claim of Texas to the territory in dispute, and upon principles of justice and equity should not be heard at this late day to question the title of the State.

. . . This question deserves the most careful examination, for long acquiescence by the general government in the claim of Texas would be entitled to great weight."

See also: *New Mexico v. Colorado*, 267 U. S. 30, 40-41, 69 L.Ed. 499, 502.

Under the foregoing decisions the possession and jurisdiction exercised by Louisiana in the Gulf of Mexico and the acquiescence of the Federal Government in that possession and jurisdiction are facts to which this Court should attach great weight in determining the rights of Louisiana in the submerged lands in dispute.

In a prior section of this brief we have outlined some of the Acts of the Louisiana Legislature assert-

ing jurisdiction over and ownership of the bed of the Gulf of Mexico, and have related facts to show that this jurisdiction and possession by the State have been exercised far out on the Continental Shelf and more than three leagues from coast. These are evidentiary facts of which the Court will not take judical notice and concerning which the State should be permitted to offer testimony and exhibits.

The acts of United States administrative and executive officials in recognizing Louisiana's title is certainly evidence to explain and interpret the original intent of the Federal and State governments in describing Louisiana's boundaries in the Act of Congress incorporating the Territory of Orleans into the State of Louisiana.[64] In Appendix H filed with this brief various Acts of the Legislature are digested covering dealings between the State and national government respecting offshore lands.

By Act 117 of 1855 the Louisiana Legislature makes reference to appropriations made by Congress for the construction of lighthouses on the coast and waters of the State. The Act provides that the Governor of the State may transfer to the United States title

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[64]Mass. v. N. Y., 271 U.S. 65, 96, 70 L.Ed. 838, 848-851;
Martin's Lessee v. Waddell, 16 Pet. 410, 10 L.Ed. 1012;
Handly v. Anthony, 5 Wheat. 374, 383, 384, 5 L.Ed. 113, 115;
U. S. v. Hill, 120 U.S. 169, 30 L.Ed. 627;
Sutherland, Statutory Construction, 3 Ed., Vol. 2, Sec. Sec. 5103.

and jurisdiction over any tract of lands containing not more than twenty acres which might be selected by an officer of the United States for the purpose of erecting thereon a lighthouse, beacon, or other public work. This Act was carried forward in Section 2948 in the Louisiana Revised Statutes of 1870, and is repeated in Act 13 of 1871. Pursuant to these Acts of the Louisiana Legislature, the Federal Government did acquire lighthouse sites on the coast and in the Gulf of Mexico from the State of Louisiana, thereby recognizing title of the State thereto.

The Louisiana Legislature in 1921 passed Act 11, (eleven) authorizing the Governor of the State to withdraw from sale certain State lands for the purpose of maintaining the navigability of the channels of the Mississippi River at its Mouth in the Gulf of Mexico. This Act recites that the United States Government, through its War Department Chief Engineers, had requested such legislation. The lands so withdrawn by the State from entry and sale extend to deep water in the Gulf of Mexico, and are bounded on the south by deep water in the Gulf of Mexico. Obviously, this Act asserted State jurisdiction and title over submerged lands lying seaward of the Mississippi River Delta.

Again in 1921 the Louisiana Legislature passed Act 52 for the creation of a Game and Fish Reserve and Public Hunting Grounds in the Delta of the Mississippi River. The lands described in this Act included submerged lands lying seaward of the Delta in the Gulf of Mexico.

By Act 329 of 1948, Louisiana joined with Florida, Alabama, Mississippi and Texas, the only other

Gulf coast states, by entering into the "Gulf States Marine Fisheries Compact", in which those states asserted their proprietary interest in and jurisdiction over marine fisheries in the Gulf of Mexico within their respective boundaries. This contract was assented to by Congress under Public Law 66, 81st Congress. It is significant to observe that in agreeing that the Fish and Wildlife Service of the United States Department of the Interior be the primary research agency of the Gulf States Marine Fisheries Commission (Compact, Art. VII), Congress recognized the proprietorship and jurisdiction of Louisiana and the other Gulf coast states in the waters, resources and seabeds within the historic seaward boundaries of the respective states. (Defendant's App. H contains excerpts from said Compact).

In the Legislative history of the Submerged Lands Act Congress took cognizance of the fact that State ownership of the submerged lands has been recognized not only by the Federal judiciary over a period of 160 years but also by the Executive Departments of the Federal Government,[65] and Congress itself.[66]

Louisiana is entitled to offer evidence, oral and documentary, for the purpose of showing acquiescence and recognition of title in the State by the Federal Government.

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[65] House Report # 215, 83rd Congress, 1st Session, page 44.

Senate Report # 133, 83rd Congress, 1st Session, page 16.

[66] Public Law 66, 81st Congress

CONCLUSION

Louisiana submits that its motion to take depositions should be sustained and that it be allowed to take the testimony of witnesses in support of the allegations of fact made in its Answer, and that the Plaintiffs motion for Judgment be overruled.

In the alternative if the Court should deny Louisiana's motion to take deposition then, it is respectfully submitted that the motion for judgment should be denied, and the Court should hold that the boundaries of Louisiana are co-extensive with the boundaries of the United States, and since the latter has extended the national boundary to the edge of the Continental Shelf, Louisiana's boundary also extends to the edge of the Continental Shelf; and that within such boundary the State of Louisiana has ownership of the seabed, subsoil and mineral resources of the Continental Shelf.

Defendant has shown that its historic boundaries extended to the 27th parallel of latitude by virtue of the Proclamation of LaSalle and the Treaty of Cession with France in 1803, and that the United States acquired that portion of the territory lying seaward in the Gulf of Mexico in trust for the State of Louisiana, and in admitting Louisiana to the Union reserved no part of the seabed, subsoil or natural resources of the Continental Shelf.

The State has further shown that the United States has not acquired any title to the Continental Shelf by any method enumerated or implied in the Constitution and that the United States has no lawful

right to dispossess the State from submerged lands and resources which it has possessed and over which it has exercised jurisdiction for a long period of time; and that to the extent that the Submerged Lands Act or the Outer Continental Shelf Lands Act of 1953 permit the Federal Government to exercise proprietary rights in said area they are violative of obligations made in Louisiana's behalf in the Treaty of Paris in 1803 and are furthermore in conflict with the fifth, ninth and tenth amendments to the Constitution, and are also in conflict with Article IV, Section 4 of the Constitution.

In the alternative, and only if the Court should deny Louisiana's title and claim set forth above, it is submitted that Act 33 of 1954 of the Legislature of Louisiana correctly designates the coast line of the State as fixed in accordance with appropriate Acts of Congress, and that Louisiana's boundary extends three leagues seaward of that line under the terms of the Act admitting the State to the Union in 1812.

It is further submitted in the alternative that since the United States has consistently approved State ownership of a three league belt in the Gulf of Mexico, and that the Congress has recognized the boundaries of Texas and Florida as extending three leagues into the Gulf of Mexico, any contrary interpretation of the Act of Admission of Louisiana would deprive this

State of the benefits of the equal footing clause of the Constitution.

Respectfully submitted,

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I, _____ one of the attorneys for the State of Louisiana, defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that on the _____day of_____ _____, 1957, I served copies of the foregoing Brief of the State of Louisiana In Opposition To The Motion For Judgment By The United States, by leaving copies thereof at the offices of the Attorney General and the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C.

_____

OF COUNSEL

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No. 10 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, [illegible] 1958

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

Appendix To Brief On Behalf Of The State Of Louisiana

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UNITED STATES OF AMERICA, PLAINTIFF

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Appendix To Brief On Behalf Of The State Of Louisiana

A. CONTINENTAL SHELF — EXECUTIVE AND LEGISLATIVE PROCLAMATIONS AND ACTS

1. PRESIDENTIAL PROCLAMATION

No. 2667

(10 F. R. 12303)

"A PROCLAMATION (No. 2667)

Policy Of The United States With Respect To The Natural Resources Of The Subsoil And Sea Bed Of The Continental Shelf

(By the President of the United States of America)

WHEREAS the Government of the United States of America, aware of the long range world-wide need for new sources of petroleum and other minerals, holds the view that efforts to discover and make available new supplies of these resources should be encouraged; and

Whereas, its competent experts are of the opinion

that such resources underlie many parts of the continental shelf off the coasts of the United States of America, and that with modern technological progress their utilization is already practicable or will become so at an early date; and

Whereas, recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilization when and as development is undertaken; and

Whereas, it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources;

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.

Having concern for the urgency of conserving and

prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this twenty-eighth day of September, in the year of our Lord nineteen hundred and forty-five, and of the Independence of the United States of America, the one hundred and seventieth.

HARRY S. TRUMAN

(Seal)

By the President:

Dean Acheson,

Acting Secretary of State.

September 28, 1945.

2. SUBMERGED LANDS ACT OF MAY 22, 1953
67 Stat. 29, 43 U.S.C. 1301, et seq.

Title 1, Sec. 2, 43 U.S.C. 1301 (a) (2), (b), (c), (e):

When used in this chapter

(a) The term "lands beneath navigable waters" means—

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, and

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 1303 of this title but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;

(c) The term "coast line" means the line of ordi-

nary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters;

(e) The term "natural resources" includes, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power, or the use of water for the production of power;
Title II, Sec. 3, 43 U.S.C 1311:

(b) (1) The United States releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources;
Title II, Sec. 4, 43 U.S.C. 1312:

§ 1312. **Seaward boundaries of States**

The seaward boundary of each original coastal State is approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or other-

wise, indicating the intent of a State so to extend its boundaries is approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress. May 22, 1953, c. 65, Title II, § 4, 67 Stat. 31.

3. OUTER CONTINENTAL SHELF LANDS ACT OF AUGUST 7, 1953

67 Stat. 462, 43 U.S.C. 1331, et seq.

Sec. 2, 43 U.S.C. 1331 (a) :

When used in this subchapter—

(a) The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 1301 of this title, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

Sec. 3, 43 U.S.C. 1332:

§ 1332. Congressional declaration of policy; jurisdiction; construction

(a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Conti-

nental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter.

(b) This subchapter shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected. Aug. 7, 1953, c. 345, § 3, 67 Stat. 462.

Sec. 4(a) (1) 43 U.S.C. 1333:

§ 1333. Laws and regulations governing lands —Constitution and United States laws; laws of adjacent States; Publication of projected State lines; restriction on State taxation and jurisdiction

(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artifical islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

4. EXTRACTS FROM THE LEGISLATIVE HISTORY OF THE SUBMERGED LANDS ACT AND OUTER CONTINENTAL SHELF LANDS ACT

House Report No. 215, 83rd Cong. 1st Sess.*

Mr. Reed of Illinois, from the Committee on the Judiciary submitted the following

REPORT
(To accompany H. R. 4198)

(1) The Committee on the Judiciary, to whom was referred the bill (H. R. 4198) to confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters, and to provide for the use and control of said lands and resources and the resources of the outer Continental Shelf, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

Preliminary Statement

For legislative background and factual information on previous measures relating to title and control of lands beneath navigable waters within State boundaries, the use and control of said lands and natural resources therein, as well as control, exploration, development, and conservation of certain resources of the Continental Shelf, there is incorporated

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* Page numbers of this report are inserted in the text in parentheses.

in this report as an appendix hereto, House Report No. 695 of the 82d Congress, 1st Session.

The Need For Legislation (2)

Since the court decisions in the cases involving the States of California, Louisiana, and Texas, new development of the vast potentialities located in these lands has been brought almost to a complete standstill, particularly in the Gulf of Mexico. The litigation which was the primary cause of these stoppages threatens to further retard any progress. Therefore, the committee feels that permanent legislation covering all phases of this litigation must be enacted.

Another factor which gives support for the enactment of such legislation appears in the activities of other sovereign nations throughout the world in extending their jurisdiction seaward over these lands off their respective shores. Such extensions vary from a few miles to 200 miles . . .

Title II—Lands Beneath Navigable Waters Within State Boundaries (5)

The United States relinquishes unto said States or persons all rights, titles, interest, if any it has, to all these lands, moneys, improvements, and natural resources. All claims arising out of past operations in this area are released by the United States.

Title III—Outer Continental Shelf Outside State Boundaries (6)

What is the Continental Shelf?

Continental shelves have been defined as those

slightly submerged portions of the continents that surround all the continental areas of the earth. They are a part of the same continental mass that forms the lands above water. They are that part of the continent temporarily (measured in geological time) overlapped by the oceans. The outer boundary of each shelf is marked by a sharp increase in the slope of the sea floor. It is the point where the continental mass drops off steeply toward the ocean deeps. Generally, this abrupt drop occurs where the water reaches a depth of 100 fathoms or 600 feet, and, for convenience, this depth is used as a rule of thumb in defining the outer limits of the shelf.

Necessity for legislation (7)

The committee is also of the opinion that legislative action is necessary in order to confirm and give validity to Presidential Proclamation 2667 of September 8, 1945, wherein the President, By Executive declaration asserted, in behalf of the United States, jurisdiction, control, and power of disposition over the natural resources of the subsoil and seabed of the Continental Shelf. Many other nations have made assertions to a similar effect with respect to their continental shelves, and the committee believes it proper and necessary that the Congress make such an assertion in behalf of the United States. Such assertion is made in section 8 (a) of the bill.

. . . This Nation's claim to the natural resources was strengthened by the earlier action of some of the States in leasing, and consequently bringing about the

actual use and occupancy of the Continental Shelf. The benefits flowing to the United States from such State action was recognized by the Supreme Court in the Louisiana case, for it said:

> "So far as the issues presented here are concerned, Louisiana's enlargement of her boundary emphasizes the strength of the claim of the United States to this part of the ocean and the resources of the soil under that area, including oil."

APPENDIX

HOUSE OF REPRESENTATIVES
82d Congress—*First Session*

Report No. 695

Mr. Fellows, from the Committee on the Judiciary, submitted the following

REPORT

(To accompany H. R. 4484)

The Committee on the Judiciary, to whom was referred the bill (H. R. 4484) to confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters, to provide for the use and control of the lands and resources, and to provide for the use, control, exploration, development, and conservation of certain resources of the Continental Shelf lying outside of State boundaries, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

Introduction

H. R. 4484 is similar to H. R. 8137, Eighty-First

Congress, second session, favorably reported by this committee to the House of Representatives on May 17, 1950, and is also similar in many respects to H. R. 5991 on which hearings were held on August 24, 25, and 29, 1949 by Subcommittee No. 1 of the Committee on the Judiciary of the House of Representatives.

(5) Title II merely fixes as the law of the land that which, throughout our history prior to the Supreme Court decision in the California case in 1947, was generally believed and accepted to be the law of the land; namely, that the respective States are the sovereign owners of the land beneath navigable waters within their boundaries and of the natural resources within such lands and waters. Therefore, title II recognizes, confirms, vests, and establishes in the States the title to the submerged lands, which they have long claimed, over which they have always exercised all the rights and attributes of ownership.

(11) The Continental Shelf off the United States, excluding Alaska, embraces some 185,800,000 acres, divided approximately in three regions, as follows:

	Acres
Pacific Ocean	11,900,000
Gulf of Mexico	92,300,000
Atlantic Ocean	81,600,000

(15) At the time Louisiana and Texas extended their seaward boundaries to 27 marine miles, the United States was not claiming ownership or jurisdiction and control over the Continental Shelf. Actually, some years earlier the State Department had taken

the position that the United States had no jurisdiction over the ocean bottom of the Gulf of Mexico beyond the territorial waters adjacent to the coast and that therefore it was not in a position to grant a lease on this area.

(16) Furthermore, the United States did not dispute the actions taken by the two States. While on September 8, 1945, President Truman issued Proclamation 2667 declaring that the natural resources of the subsoil of the sea bed of the Continental Shelf adjacent to the United States were subject to its jurisdiction and control, Executive Order 9663, issued on the same day, provided that neither it nor the proclamation should affect the determination of any issue between the United States and the several States relating to the ownership and control of the Continental Shelf either within or outside the 3-mile limit. From their own provisions it is clear that the proclamation and Executive order were merely an assertion of the jurisdiction and control as against foreign nations and merely the means of placing other countries on notice of the policy to be followed by the United States with reference to the resources of the Continental Shelf. This view is confirmed by the White House press release issued along with the proclamation and order.

As previously mentioned, no Federal claim against Louisiana and Texas was made until motion for leave to file suit against these States was filed by the United States Attorney General in the Supreme Court on De-

cember 21, 1948. No Federal claim has yet been made against Florida . . .

(17) Section 8 of H. R. 4484 asserts Federal jurisdiction and control over the Continental Shelf areas beyond original State boundaries, thus bringing the lands and resources within such areas into the same legal status as those acquired by the United States through cession or annexation; in the alternative, such lands and resources are subject to the doctrine of discovery. Adherence to the policy heretofore observed in connection with similar lands and resources brought under national dominion requires, as a matter of policy and law, that the property rights of individuals in and to such lands and resources be recognized and confirmed.

APPENDIX I

HOUSE OF REPRESENTATIVES

80th Congress—2d Session

Report No. 1778

REPORT

(To accompany H. R. 5992)

The Committee on the Judiciary, to whom was referred the bill (H. R. 5992) to confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and natural resources within such lands and waters and to provide for the use and control of said lands and resources, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

Introduction

H. R. 5992, is, in substance, the same as numer-

ous bills introduced in the House. It is substantially the same as S. 1988 introduced in the Senate jointly by 20 Senators.

(22) I. Support for and opposition to the legislation

Supported by public officials

The measure is actively supported by a large number of organizations composed of public officials, among which are (*a*) the National Association of Attorneys General, made up of the attorneys general of the 48 States; (*b*) Conference of Governors, composed of the governors of the 48 States; (*c*) National Association of State Land Officials; (*d*) American Association of Port Authorities; (*e*) National Institute of Municipal Law Officers; (*f*) Council of State Governments; (*g*) Conference of Mayors; (*h*) Interstate Oil Compact Commission; (*i*) National Association of Secretaries of State; and (*j*) Port of New York Authority. Hon. Millard F. Caldwell, Governor of the State of Florida; Hon. J. Strom Thurmond, Governor of the State of South Carolina; Hon. William Tuck, Governor of the State of Virginia; Hon. Frank Carlson, Governor of the State of Kansas; Hon. Beauford H. Jester, Governor of the State of Texas; and Hon. Earl Warren, Governor of the State of California, appeared in person to support the legislation. Numerous other State governors appeared through personal representatives or filed statements in support of the legislation. The attorneys general of 38 States appeared in person or through their assistants and depu-

ties or filed statements urging the adoption of the legislation. Representatives of the State Legislature of the State of California appeared in person. (3) Resolutions and memorials in support of the legislation were received from a number of State legislative bodies.

Supported by other organizations

Representatives of other organizations appeared to support the bill, including (*a*) American Bar Association, (*b*) Texas Bar Association, (*c*) United States Chamber of Commerce, and (*d*) Independent Petroleum Association of America. Also, numerous organizations submitted statements and resolutions supporting the legislation, including State teachers' associations, civic organizations, and commercial associations.

II. Purpose of Legislation (3)

The purpose of H. R. 5992, like that of House Joint Resolution 225, which passed the Seventy-ninth Congress by a very substantial majority but was vetoed by President Truman, is to confirm and establish the rights and claims of the 48 States, long asserted and enjoyed with the approval of the Federal Government, to the lands and resources beneath navigable waters within their boundaries; subject, however, to the right of the United States to exercise all of its constitutional regulatory powers over such lands and waters.

III. History of Legislation (4-5)

One hundred and sixty years of unchallenged ownership by the States

Throughout our Nation's history the States have been in possession of and exercising all the rights and attributes of ownership in the lands and resources beneath the navigable waters within their boundaries. During a period of more than 150 years of American jurisprudence the Supreme Court, in the words of Mr. Justice Black, had—

> used language strong enough to indicate that the Court then believed that the States also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not.

That same belief was expressed in scores of Supreme Court opinions and in hundreds of lower Federal courts' and State courts' opinions. Similar beliefs were expressed in rulings by Attorneys General of the United States, the Department of the Interior, the War Department, and the Navy Department. Lawyers, legal publicists, and those holding under State authority accepted this principle as the well-settled law of the land.

As late as 1933, the then Secretary of the Interior, Harold L. Ickes, in refusing to grant a Federal oil lease on lands under the Pacific Ocean within the boundaries of California, recognized:—

> Title to the soil under the ocean within the 3-mile limit is in the State of California, and the

land may not be appropriated except by authority of the State.

Claims of States first challenged by Federal officals in 1937

It was not until a few applicants for Federal oil leases and their attorneys continued to insist that the United States owned the soil under navigable waters, that, in the words of Mr. Ickes, "doubt" arose in his mind as to which Government owned the submerged lands. The "doubt" was first publicly expressed in the Nye resolution introduced in the Seventy-fifth Congress in 1938, and was subsequently expressed in the Hobbs and O'Connor resolutions and the Nye and Walsh resolutions introduced in the Seventy-sixth Congress in 1939, all of which failed of enactment. . . .

The theory advanced in 1938 and 1939 by the same Federal departments which now oppose H. R. 5992 was to the effect that the United States had no right to appropriate the natural resources within the submerged coastal lands unless the Congress, as the policy-making branch of the Government, asserted what was contended to be a dormant right. They spoke of the right as being "novel" and one never before asserted by the United States under the Constitution, and as being a right which the States had been asserting and enjoying, and would continue to assert and enjoy unless and until the Congress changed the policy of the Federal Government. Congress, however, did not change the long-existing and recognized policy.

Decision of Supreme Court denying California ownership (5)

On June 23, 1947, the Supreme Court rendered its opinion in the case of *United States v. California*, and on October 27, 1947, a decree was entered which reads, in part, as follows:

1. The United States of America is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominion and power over, the lands, minerals, and other things underlying the Pacific Ocean lying seaward of the ordinary low-water mark on the coast of California, and outside of the inland waters, extending seaward three nautical miles and bounded on the north and south, respectively, by the northern and southern boundaries of the State of California. The State of California has no title thereto or property interest therein.

In the Court's majority opinion, Mr. Justice Black said: (6)

> The crucial question on the merits is not merely who owns the bare legal title to the lands under the marginal sea. The United States here asserts rights in two capacities transcending those of a mere property owner.

He then proceeded to define those two capacities as that of national defense and of conducting foreign relations.

Mr. Justice Black, in the majority opinion, stated further:

> As previously stated this Court has followed

> and reasserted the basic doctrine of the Pollard case many times. And in doing so it has used language strong enough to indicate that the Court then believed that States not only owned tidelands and soil under navigable inland waters, but also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not.

Thus the Court by its decision not only established the law differently from what eminent jurists, lawyers, and public officials for more than a century had believed it to be, but also differently from what the Supreme Court apparently had believed it to be.

This committee, having heard the testimony of many able and distinguished State attorneys general, of representatives of the American Bar Association and State bar associations, and of other able and distinguished jurists and lawyers, is of the opinion that no decision of the Supreme Court in many years has caused such dissatisfaction, confusion, and protest as has the California case. We have heard it described in such terms as "novel," "strange," "extraordinary and unusual," "creating an estate never before heard of," "a reversal of what all competent people believed the law to be," "creating a new property interest," "a threat to our constitutional system of dual sovereignty," "a step toward the nationalization of our natural resources," "causing pandemonium," etc.

(8) Mr. Justice Black, in speaking for the majority of the Court in the California case, said:

> The very oil about which the State and Na-

tion here contend might well become the subject of international dispute and settlement.

If the Court in making the statement had reference to the military power of a foreign nation to dispute the rights of the States to take oil under submerged lands within their boundaries, then the same statement could correctly be made about oil under uplands, providing, of course, the foreign nation possessed a military force strong enough to compel a settlement by the United States. However, if the statement was made because the Congress had never legislatively asserted on behalf of the United States or the States title to the submerged lands within their boundaries, then we think that is all the more reason why the Congress should now remove all doubt about the title by ratifying and confirming the titles long asserted by the various States, subject always, of course, to the paramount powers of the Federal Government under the Constitution, which titles have never been disputed by any foreign nation.

Federal Government has traditionally obtained grants from the States (12)

At the request of executive departments of the Federal Government, the States have deeded to the United States portions of their submerged lands lying outside the inland waters and within the 3-mile belt. (See Government's brief, p. 227 et seq. and appendix to California's brief, p. 169 et seq. in *U. S. v. California.*) . . .

These facts establish conclusively that the States,

during more than a century, have been exercising the highest rights of ownership by conveying to the United States a part of the submerged lands within their boundaries.

Possession and use of submerged coastal lands by the States (13)

The earliest assertions by the States of proprietary rights in their submerged lands arose in connection with regulation of fishing. Except in a few instances, where international treaties were involved, State control of fishing in navigable waters, within the State's boundaries, has been exclusive. The principal basis for this right to control fishing rests upon the proprietary rights of the State to the waters and the soil thereunder. Proprietary rights further have been exercised by granting leases for harvesting kelp, removing sand, gravel, shells, sponges, etc. States and their grantees have expended millions of dollars to build piers, breakwaters, jetties, and other structures, to install sewage-disposal systems and to fill in beaches and reclaim lands. During the past two decades California, Louisiana, and Texas have been leasing substantial portions of the lands in question for oil, gas, and mineral development. California commenced such leasing in 1921 and Texas in 1926. Other States, including Washington, Florida, Mississippi, North Carolina, and Maryland, have made leases for like purposes. States have levied and collected taxes upon interests in and improvements on these lands. It ap-

pears to the committee that the States have exercised every sovereign right incident to the utilization of these submerged coastal lands.

Recognition of State ownership by Congress (13)

In 1868 Congress approved the Constitution of Florida, in which its boundaries were defined as extending 3 marine leagues seaward and a like distance into the Gulf of Mexico. Texas' boundary was fixed 3 marine leagues into the Gulf of Mexico at the time it was admitted to the Union in 1845 by the annexation agreement. . . .

"In 1938 and 1939 the Congress failed to enact legislation asserting ownership of submerged lands in the Federal Government, and in 1946 the Congress confirmed States' ownership of such lands by enactment of House Joint Resolution 225, which was vetoed by President Truman.

These affirmative acts by the Congress, and its failure to deny State ownership at any time in our history, establish conclusively that the congressional policy, at least since 1850, consistently has been to recognize State ownership of the lands in question.

Recognition of State ownership by the executive departments

Many attorneys general have approved, over a period of 100 years, as required by law, the title to the submerged coastal lands granted to the United States by the States. The War and Navy Departments have treated these lands as owned by the States since the

Departments originated most of the requests for State grants of such lands to the United States. In some 30 opinions, from 1900 to 1937, the Department of the Interior ruled that ownership of the soil in the 3-mile belt was in the respective States. A quotation from one of these decisions rendered February 7, 1935, will illustrate the opinion of the Interior Department:

> It is not questioned that the land lies below the level of ordinary high tide of the Pacific Ocean. * * *
>
> "Upon the admission of California into the Union upon equal footing with the original States, absolute property in, and dominion and sovereignty over, all soils under the tidewaters within her limits passed to the State, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, * * * " (*Weber v. Harbor Commissioners*, 18 Wall. 57, 65).
>
> The Department, therefore, has no jurisdiction over the subject matter. This rule is regarded as decisive and binding on the Department. * *

In its opinion in the California case, the Supreme Court agrees that the facts above discussed are—"undoubtedly consistent with the belief on the part of some Government agents at the time that California owned all, or at least, a part of the 3-mile belt."

The facts are conclusive that at least prior to 1937 the policy of the executive departments of the Government has consistently been to recognize State ownership of the submerged lands, whether inland or not, within the territorial jurisdiction of the State.

Recognition of State ownership by the judiciary

The evidence conclusively establishes that prior to the California decision the Supreme Court had in more than 30 cases, covering the period 1842 to 1935, announced the principle that the States owned the soils under all navigable waters within their territorial jurisdiction whether inland or not. A few examples of the language used in these decisions follow (emphasis supplied):

> For when the Revolution took place the people of each State became themselves sovereign, and in that character hold the absolute right to *all their navigable waters* and the soils under them * * * (*Martin v. Waddell*, 16 Peters 367, 410 (1842).
>
> (15) All soils under the tidewaters within her limits passed to the State (*Weber v. Harbor Commissioners*, 18 Wallace 57, 66 (1873).
>
> It is the settled law of this country that the ownership of and dominion and sovereignty over lands covered by tidewaters, *within the limits of the several States*, belong to the respective States within which they are found, * * * (*Illinois Central R. R. Co. v. Illinois*, 146 U. S. 387 (1892).
>
> The soils under *tidewaters* within the original States were reserved to them respectively, and the States since admitted to the Union have the same sovereignty and jurisdiction to such lands *within their borders* as the original States possessed (*Borax Consolidated v. Los Angeles*, 296 U. S. 10, 15 (1935).

The committee takes cogizance of the fact that the word "tidewaters" as applied to the facts in the cases cited above could not refer merely to the strip of land between high and low-water mark. Indeed, it was held by the Supreme Court of the United States in *Manchester v. Mass.* (139 U. S. 258) that the term "tidewaters" includes the 3-mile belt.

The above citations are by no means isolated instances. Similar expressions have been used in Supreme Court opinions written by some of the most outstanding jurists in American history. Among them are Chief Justices Waite, Fuller, White, Taft, Stone, and Justices Lamar, Gray, Holmes, Brandeis, and Cardozo.

Hon. Manley O. Hudson, appearing at the request of Texas, after citing and quoting from a number of cases by the Supreme Court, commented on the expressions of the Court as follows:

> It is an imposing array of pronouncements —as imposing for their consistency as for the repetition. Mr. Justice Black says with becoming modesty that the Court "has used language strong enough to indicate that the Court then"—that is, over a period of a hundred years—"believed that States not only owned tidelands and soil under navigable inland waters, but also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not." He could have added that for generations lawyers, good lawyers, careful lawyers, all over the country believed the same thing, that they advised their

clients that such was the law, and that acting on that advice their clients invested millions of their money and years of their energy in improvements and installations.

The evidence is conclusive that not only did our most eminent jurists so believe the law to be, but such was the belief of lower Federal court jurists and State supreme court jurists as reflected by more than 200 opinions. The pronouncements were accepted as the settled law by lawyers and authors of leading legal treatises.

The present Court in the California decision did not expressly overrule these prior Supreme Court opinions but, in effect, said that all the eminent authorities were in error in their belief.

For the first time in history the Court drew a distinction between the legal principles applicable to bays, harbors, sounds, and other inland waters on the one hand, and to submerged lands lying seaward of the low-water mark on the other, although it appears the Court had ample opportunity to do so in many previous cases, but failed or refused to draw such distinction. In the California decision the Court refused to apply what it termed "the old inland water rule" to the submerged coastal lands; however, historically speaking, it seems clear that the rule of State ownership of inland waters is, in fact, an offshoot of the marginal sea rule established much earlier.

Equity best served by establishing State ownership (16)

The repeated assertions by our highest Court for a period of more than a century of the doctrine of State ownership of all navigable waters, whether inland or not, and the universal belief that such was the settled law, have for all practical purposes established a principle which the committee believes should as a matter of policy be recognized and confirmed by Congress as a rule of property law.

The evidence shows that the States have in good faith always treated these lands as their property in their soverign capacities; that the States and their grantees have invested large sums of money in such lands; that the States have received, and anticipate receiving large income from the use thereof, and from taxes thereon; that the bonded indebtedness, school funds, and tax structures of several States are largely dependent upon State ownership of these lands; and that the legislative, executive, and judicial branches of the Federal Government have always considered and acted upon the belief that these lands were the properties of the sovereign States.

If these same facts were involved in a dispute between private individuals, an equitable title to the lands would result in favor of the person in possession. The Court in the California case states, as a matter of law, that the Federal Government—

is not to be deprived of those interests by the

> ordinary court rules designed particularly for private disputes over individually owned pieces of property; * * *

The effect of this ruling of the Court is to place the State of California in the same legal position as an individual, thereby depriving it of its status as a sovereign. It should be noted that the case of *U. S. v. California* was a controversy between two sovereigns, namely, the United States on the one hand and the State of Calofirnia on the other, both of which occupied equal dignity as sovereigns. The sovereign rights enjoyed by the United States were in the first instance derived from the States and the sovereign powers of the United States can rise no higher or have any greater effect than that which was delegated to the Central Government by the Constitution. The committee believes that, as a matter of policy in this instance, the same equitable principles and high standards that apply between individuals, should be applied by Congress as between the National Government and the sovereign States. (See Indiana v. Kentucky, 136 U.S. 479, 500 (1890); U. S. v. Texas, 162 U.S. 1, 61 (1896); New Mexico v. Texas, 275 U.S. 279 (1927).)

Therefore, the committee concludes that in order to avoid injustices to the sovereign States and their grantees, legislative equity can best be done by the enactment of S. 1988.

H. R. 5992 is not a gift to the States in any equitable sense

Attorney General Clark and Secretary Krug insisted that H. R. 5992 constituted a gift from the Federal Government to the several coastal States. Such objection, if it be one, must be predicated upon the assumption that H. R. 5992 will take from the United States Government some property right which it has heretofore enjoyed, and vest in the States rights and interest not hitherto enjoyed by the States. Such is not the case. The Federal Government has never, prior to 1937, asserted any right in the submerged tidelands, has never enjoyed any rights, either in its sovereign or proprietary capacity over such lands, but at all times, from the inception of the Government and prior to 1937, acting through its executive agencies, recognized that unqualified ownership was in the coastal States and that such States had full and complete sovereignty and dominion over these lands, subject to the constitutional right of the Federal Government to regulate commerce. The Committee cannot agree that the relinquishment by the Federal Government of something it never believed it had, and the confirmation of rights in the States which they always believed they did have and which they have always exercised, can be properly classified as a "gift," but rather a mere confirmation of titles asserted under what was long believed and accepted to be the law. On the basis of such belief and acceptance the

States and their citizens have made large investments, in good faith, that would now be wiped out by the rule announced in the California case.

It is not in the public interest that administration and control of submerged lands be transferred from the States to the Federal Government (17)

This problem, as suggested by Mr. Justice Frankfurter, "involves many far-reaching, complicated, historic interests." Here we have the broad question whether Congress should confirm or whether it should reverse the traditional and long-accepted policy and practice that submerged lands within a State's boundary and all resources therein belong in a proprietary sense to the States, subject, of course, to all powers delegated to the United States by the Constitution. This far-reaching historic policy should be reversed only if the national interest demands such reversal. The committee is of the opinion that not only will the public interest be best served by confirming the rights of the States but that common justice and equity require such action.

The only reason advanced by the Federal officials who advocate the change is their desire for Federal management of the production of oil. It is noteworthy that the controversy had its inception in 1937 by reason of the Federal departments' attempt to secure congressional sanction of their plans to assume control of the oil fields off the California coast. The subject matter of the litigation instituted by the Department of Justice and resulting in the decision in *United*

States v. *California* was oil. The Departments of the Interior, Justice, and Defense base their objection to the continuance of State management of submerged lands on the sole ground that such lands contain valuable oil deposits. In their testimony the representatives of the Federal departments have admitted that they are not interested in anything but the oil. The Government's management bill deals only with oil.

Public interest as to resources other than oil (21)

The Court's decree in the California case covered not only the oil but the land, minerals, and "other things" underlying the ocean in the 3-mile belt.

The fishing industry is one of the major industries in our country and represents an important source of our food supply and of our national income. State control of fishing, especially for sedentary fish, such as shrimp, oysters, clams, crabs, lobsters, etc., has been based upon the State's ownership of the soil. Regulations by many States are based upon the statutory declaration of the State's ownership of the waters and the fish in them. In *Smith v. Maryland* (18 How. 74) the Court said:

> The State holds the *propriety* of this soil for the conservation of the public rights of fishing thereon, and may regulate the modes of that enjoyment so as to prevent the destruction of the fishery. * * * *This power results from the ownership of the soil*, from the legislative jurisdiction of the State over it, and from its duty to preserve those public uses *for which the soil is held.* [Italics supplied.]

SENATE REPORT NO. 133,
83RD CONGRESS, 1ST SESSION

Senate Report No. 133 recommending passage of the Submerged Lands Act contains statements almost identical with those set forth above in the House Report No. 215 regarding the purposes of the law, the history of the controversy as to State ownership, and the conclusions of the Senate Committee as to the necessity and desirability of recognizing State ownership of submerged lands by the States. A few excerpts from the Senate Report that are not repetitious are set forth hereinbelow.

The purpose of Senate Joint Resolution No. 13 which is similar to the House Bill is thus stated on page 5 of the Senate Report No. 133:

III. PURPOSE OF BILL

> Senate Joint Resolution 13, as amended, determines and declares that it is in the public interest that title and ownership of lands beneath navigable waters within the boundaries of the respective States, and of the resources therein, be established and vested in the respective States. Insofar as the Federal Government has any proprietary rights in such lands and waters, that interest is relinquished or "quitclaimed" to the individual States.
>
> The measure also provides that in addition to title and ownership, but distinct from them, the States have the right and power to manage, administer, lease, develop, and use such lands and

natural resources in accordance with the terms of Senate Joint Resolution 13 and applicable State law, and whatever rights the Federal Government may have in such management and administration are established in and assigned to the States.

The proposed legislation specifically sets forth that none of the interests or rights established in, or confirmed, assigned, or quitclaimed to the States shall in any wise affect the constitutional powers of the Federal Government to regulate commerce, provide for the common defense, or to conduct international affairs in the navigable waters areas within State boundaries.

The offshore rights confirmed to the States are thus described on page 6 of the Senate Report.

Offshore submerged lands

The offshore rights which are confirmed to the States and their grantees are rights growing out of the concept of ownership and proprietary use and development—rights which were first asserted by the Federal Government in recent years and which it has never exercised or enjoyed. These rights, legally vested in the States and their grantees by Senate Joint Resolution 13, have in fact been enjoyed and exercised by them from the beginning of our history as a nation until the date of the California decision.

Under this concept of ownership and control by the several States and their grantees immense development has been achieved representing untold millions of dollars of new economic wealth. This wealth has been created through control of

the taking, within the boundaries of the States, of various forms of marine life, such as fish, oysters, shrimp, sponges, kelp and others; through the use of sand, shell, gravel and important minerals; through the erection and use of piers, as well as bulkheads and groins for the filling and conservation of new lands; through the erection and control on said new-built lands of valuable recreational, commercial, and private improvements, and through construction and use of facilities for the disposal of sewage and industrial waste. The control by the States of the production of oil and gas from their coastal belts has also created substantial values, which will continue temporarily in a few places for a few years, but such production of oil and gas in the past, present, or future is insignificant in value when compared with the many permanent values which largely determine the development and prosperity of coastal communities and many important industries.

The intention of Congress to treat all States alike appears from the following statement on page 7 of the Senate Report:

All States treated alike

The joint resolution treats all of the States alike, both inland and coastal, with respect to lands beneath navigable waters within their respective boundaries. As shown by the list in appendix F, every State has submerged lands which

are covered by this joint resolution. Comparative totals show far greater areas under inland waters and the Great Lakes, as follows:

	Acres
Lands under inland waters	28,960,640
Lands under Great Lakes	38,595,840
Lands under marginal seas	17,029,120

All of these areas of submerged lands have been treated alike in this legislation because they have been possessed, used, and claimed by the States under the same rule of law, to wit: That the States own all lands beneath navigable waters within their respective boundaries. Prior to the California decision, no distinction had been made between lands beneath inland waters and lands beneath seaward waters so long as they were within State boundaries.

The rule was stated by the Supreme Court in the early case of *Pollard v. Hagan* (3 How. 212, 229 (1845)) in the following words:

First. The shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the States respectively. Second. The new States have the same rights, sovereignty, and jurisdiction over this subject as the original States.

The Pollard case and its general rule common to lands under both inland and seaward waters was cited by 52 Supreme Court decisions and 244 State and Federal court decisions prior to the California case.[1] Excerpts from some of these opinions are included in appendix G.

[1]See Sheppard's Citations, *Pollard v. Hagan*, supra.

(8) The majority opinion in the California case concedes that the Supreme Court in the past has indicated its belief that this Pollard rule of State ownership applies equally to all lands under waters within their territorial jurisdiction, whether inland or seaward.

The purpose of this legislation is to write the law for the future as the Supreme Court believed it to be in the past—that the States shall own and have proprietary use of all lands under navigable waters within their territorial jurisdiction, ~~whether~~ inland or seaward, subject only to the governmental powers delegated to the United States by the Constitution.

The Senate Committee annexes to and makes part of Report No. 133 its report to the 80th Congress, 2nd Session, Report No. 1592, and this is set forth on pages 50 to 75 of Report No. 133.

Senate Report No. 133 ends with the following conclusion on page 24:

IX. Conclusion

The committee submits that the enactment of Senate Joint Resolution 13, as amended, is an act of simple justice to each of the 48 States in that it reestablishes in them as a matter of law that possession and control of the lands beneath navigable waters inside their boundaries which have existed in fact since the beginning of our Nation. It is not a gift; it is a restitution. By this joint resolution the Federal Government is itself doing the equity it expects of its citizens.

The committee recommends enactment of Senate Joint Resolution 13.

B. LOUISIANA'S POSSESSION AND EFFECTIVE OCCUPATION OF THE CONTINENTAL SHELF IS A BASIS OF TITLE TO THE SUB-SOIL, SEA-BED, AND NATURAL REOURCES THEREOF

The idea that the Continental Shelf may be regarded as an extension of the land-mass of the coastal State and is thus naturally appurtenant to it, is not a new concept in international law. This subject is reviewed by M. W. Mouton in his work "The Continental Shelf" which was awarded the Grotius Prize of 1952 of the Institute of International Law. On pages 32 and 33 of this work, Mouton says:

> ". . . there are some points relating to the history and origin of the shelf on which geologists are fairly unanimous. The first is, that the shelf belongs to the continents. Krummel, p. 104 (1907) writes: 'The shelf belongs to the body of the continents proper, which find their real limits from the deep sea on its outer margin, the continental-edge, mentioned above.' Umbgrove, p. 97, (1947): 'Almost everywhere the real edge of the continent is situated below sea-level.' Pratt, p. 658: 'The continental shelf may be looked upon as part of a larger earth feature, it is the outer or seaward portion of a great shelving plain which intervenes in the region of the margins of the continents between the continental heights and the oceanic depths.' Murray, in the Science of the Sea (1928), p. 248: ". . . the continental shelf . . . is regarded as belonging to the continental areas.' The Geological Nomenclator (1929) p. 7, gives for Shelf or Continental Shelf, in the

Dutch column (translated): 'The submarine continuation of the continental area up to about the 100-fathom line.' This vision on the nature of the continental shelf has been used by lawyers to apply the doctrine of contiguity or continuity or the principle of propinquity, which will be discussed later.

Already in 1803, de Rayneval (p. 161) argued on geological grounds: '. . . . le fond de la mer, le long des cotes, peut etre considere comme ayant fait partie du continent, et qu il est pour cela considere comme en faisant encore partie.' In the Proclamation of President Truman we read in the fourth paragraph: '. . . since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it . . .' and in the Mexican and Argentine Declarations we find words of the same tenor as in the Peruvian Decree of 1 August, 1947, :'. . . the continental shelf forms a single morphological and geological unity with the continent.' Yepes, who said in the 67th meeting of the International Law Commission (1950), p. 4: 'The first and most important was the rule of continuity, according to which the continental shelf was only the submarine continuation of the territory above water.' And finally Smith, p. 8: 'The shelf is nothing more than an extension of the continent into the sea. It may be argued that this fact alone gives a State paramount right to assert its claim to those resources. It would seem that the principle of propinquity is another way of stating that the geography of the location gives a State a paramount right to such resources.' "

De Rayneval's comment on this subject in his "Institutions du droit de la nature et des gens" (Paris 1803), says:

> "The sea which washes the shores of a state is deemed to form a part thereof; its safety and tranquillity render this property necessary: the sea must play the part of a bulwark. We could add that the bottom of the sea along the coasts can be considered as having formed a part of the continent and is therefore still considered as forming such part.
>
> But the extent of this property is not determined by a uniform rule. Some fix it at thirty leagues, others only at three; others again fix it at the range of a cannon placed upon the shore. Along the southern coasts of France the distance was ten leagues with regard to the moors."

Stefan A. Riesenfeld also reviews this subject in his book on "Protection of Coastal Fisheries Under International Law", published by the Carnegie Endowment for International Peace in 1942. Quoting from Riesenfeld, pages 169 and 170:

> ". . . There exist a number of statutes protecting sedentary fisheries such as pearl and oyster fisheries in the various constituent parts of the British Commonwealth of Nations.
>
> . . . Mention may be made, in the first place, of the Sea Fisheries Act of 1868 which empowered the Irish Commissioners to regulate oyster-fisheries in waters of certain depths within a distance of twenty miles seaward from a straight line between Lambay Island and Carnsore Point.

Ceylon protected its pearl fisheries as early as 1811, when it forbade hovering within an area between the four-and twelve-fathom lines, i.e., a zone stretching at some points to a distance of twenty miles from the shore. The new Pearl Fisheries Ordinance, No. 2 of 1925, applies to 'pearl banks', defined in an annexed schedule as a determinate area between the three-or in some places five-fathom line and the 100-fathom line, which is an area much larger even than the zone protected by the ordinance of 1811.

The various Australian States have a number of statutes protecting oyster and pearl fisheries.

Queensland protects oysters by the "Fish and Oyster Acts, 1914 to 1935," which are applicable apparently only within the 'territorial limits,' and pearls by the 'Pearl shell and Beche-de-Mer Fishery Acts, 1881 to 1931,' which apply to an area extending much beyond three miles and reaching in certain places as far as 250 miles from the coast. New South Wales protects oysters by the 'Fisheries and Oyster Farms Act of 1935,' applicable 'to the territorial limits of New South Wales.' South Australia does the same by her 'Fisheries Act, 1917-1935,' which concerns only fisheries and oyster beds 'near the coast' or on 'Crown lands,' which include according to the statutory definition 'any land under the sea, within the territorial limits of the state.' Tasmania regulates oyster fishing by the Fisheries Act of 1935. Judging from the wording of the statute, the usual jurisdiction over 'any portion of the bed of the sea' (Sec. 12 of the act) is to

be exercised . . . Western Australia possesses three statutes: oyster fisheries are protected by a statute of 1881, pearl-fisheries by the Pearling Act 1912-1935, which does not set any limit within which the Governor may declare a part of the ocean to be one of the carefully protected 'pearl-shell areas' but evidently contemplates a larger belt than the three-mile zones; and fisheries in general by the Fisheries Act, 1905-1921, which does not set any definite limits for the application of the act . . . "

Great Britain has usually adhered to the three-mile rule since she became a great naval power. Her position regarding the ownership of the Continental Shelf beyond three-miles offshore is commented on by Riesenfeld on pages 165-167, as follows:

"In 1928 Great Britain had another important occasion to state her position with respect to the breadth of territorial waters. In a letter of December 6, 1928, directed to the Preparatory Committee for the Conference for the Codification of International Law, the British Government made the following observations:

I

His Majesty's Government in Great Britain agree that the rights which States possess over their territorial waters are rights of sovereignty.

* * * *

"(c) No claim is made by His Majesty's Government in Great Britain to exercise rights over the high seas outside the belt of territorial waters.

There are certain banks outside the three-

mile limit off the coasts of various British dependencies on which sedentary fisheries of oysters, pearl oysters, chanks or beches-de-mer on the sea bottom are practiced, and which have by long usage come to be regarded as the subject of occupation and property. The foregoing answer is not intended to exclude claims to the sedentary fisheries on these banks. The question is understood to relate only to claims to exercise rights over the waters of the high seas.

The Government of India adopted the British memorandum in a letter sent to the Preparatory Committee for the Conference for the Codification of International Law under the date of December 15, 1928. New Zealand did the same by a letter of October 20, 1928. The Commonwealth of Australia submitted her own answer on January 9, 1929, but took substantially the same view as Great Britain. The Australian answer reads in part as follows:

(c) They make no claim to exercise rights over the high seas outside the belt of territorial waters. This answer is made on the understanding that the question relates only to claims to exercise sovereign rights over the waters of the high seas, and does not relate to claims to exercise jurisdiction over sedentary fisheries for pearl oysters and beches-de-mer, etc.; on certain portions of the sea bottom outside the three-mile limit which, by long usage, have come to be regarded as the subject of occupation and property."

The Union of South Africa and Canada took a

view which was in accordance with that of Great Britain (Riesenfeld 168).

Claims to sedentary fisheries and natural resources in the subsoil and seabed in the Continental Shelf are based upon territorial ownership. In this connection Westlake in his work on International Law, Part I, Pages 186 and 187, writes:

> "The case of the pearl fishery is peculiar, the pearls being obtained from the sea bottom by divers, so that it has a physical connection with the stable element of the locality which is wanting to the pursuit of fish swimming in the water. When carried on under state protection, as that off the British Island of Ceylon, or that in the Persian Gulf which is protected by British ships in pursuance of treaties with certain chiefs of the Arabian mainland, it may be regarded as an occupation of the bed of the sea. In that character the pearl fishery will be territorial even though the shallowness of the water may allow it to be practised beyond the limit which the state in question generally fixes for the littoral sea . .. . and the territorial nature of the industry will carry with it, as being necessary for its protection, the territorial character of the sea at the spot."

Mouton in his work on the Continental Shelf, pages 145-146, refers to statements made by Sir Cecil Hurst in the British Yearbook of International Law (1923-1924), as follows:

> "Hurst, p. 40, refers to Hall, who holds the view that appropriation of larger sea areas was given up through abandonment and that mari-

time occupation must be effective in order to be valid (p. 189). Hurst then says: 'If it is disuse and disuse alone which has led to a restriction of the rights of the Sovereign in the bed of the sea, it follows that in cases where there has been effective occupation of a portion of the bed of the sea within the meaning of the principle enunciated by Hall and such occupation still continues, there has been no abandoning of the rights of ownership, and consequently the ownership still continues. Assuming that this proposition is sound, it removes a difficulty which has found expression in writings on international law as regards sedentary fisheries.'

Hall, however, speaks about the sea and Hurst about the seabed.

It is true, as Oppenheim, p. 575, says that 'there has been a tendency in the past to assume that the surface of the bed upon which the open sea rests must be likened in legal condition to the waters of the open sea themselves.' But Oppenheim criticizes this view when he continues to say that the reasons for 'the abandonment of the former claims to occupy the waters of the open sea . . . do not apply to the sea-bed . . .'

On p. 576 he says that 'although it is traditional to base some of these cases on the ground of prescription . . . that a State may by strictly local occupation acquire, for sedentary fisheries and for other purposes, sovereignty and property in the surface of the seabed, provided that in so doing it in no way interferes with freedom

of navigation, perhaps we should add, with the breeding of free swimming fish'."

Reference may also be made to the comment made by Mouton in the "Continental Shelf," page 154:

> "The Under Secretary of State for Foreign Affairs said about this question in the British Parliament in 1923, (column 1261):
>
> '. . . pearl fisheries stand on a different footing to the ordinary kind of fishing in the waters of the sea, because the banks where the pearl oysters lie must be treated as part of the bed of the sea. For many centuries the pearl-banks off the coast of Ceylon have been claimed as subject to sovereignty of the rulers of the neighboring territory and subject therefore also to their control . . .' and (column 1262): '. . . where they are situated under the high seas the claim to sovereignty and control is limited in extent to the area of the banks, and does not affect the rights of navigation or of ordinary fishing in the waters over the banks."
>
> There are certain banks outside the 3-mile limit off the coasts of various British dependencies on which sedentary fisheries of oysters, pearl oysters, chanks or beches-de-mer on the sea-bottom are practised, and which have by long usage come to be regarded as the subject of occupation and property . . . "

Colombos, in his "International Law of the Sea" (1954), Third Edition, Section 353, page 306 and 307, makes the following statements as to the right of the coastal State to claim the ownership of portions of the Continental Shelf occupied by it:

§ 353. Protection of sedentary fisheries. -

A similar conception of a State's right to protect its 'sedentary' fisheries is to be traced in the claim which has been asserted by the British Government to the pearl fisheries off the Gulf of Manaar and Palk's Bay, commonly referred to as the "Ceylon fisheries" and which extend some eighteen miles beyond territorial waters. Vattel had already asked himself the question 'Who can doubt that the pearl fisheries of Bahrein and of Ceylon can lawfully fall under ownership?' It must, however, be pointed out that at the time Vattel wrote his famous book the doctrine of the freedom of the seas had not as yet been generally acknowledged as a principle of international law. Much more modern writers have rested the justification of the British claims on the occupation of the bed of the sea which, it is contended, is capable of being subjected to a State's ownership . . .

Sir Cecil Hurst, in a remarkable article already referred to, concluded that such claims are valid provided they conform to certain conditions, namely (i) the coastal State must have exercised effective occupation of, and jurisdiction over, the sedentary fisheries on the sea-bed for a long period; (ii) there must be no interference with freedom of navigation in the waters above the sea-bed; and (iii) there must be no interference with the right to catch swimming fish in the waters above the sea-bed. In their comments on the Revised Draft Articles on the Continental shelf prepared by the International Law Commission in 1951, the British Government stated

that they considered Sir Cecil Hurst's article as correctly stating the law on sedentary fisheries and that they were in entire agreement with the author's conclusion that 'the claim to the exclusive ownership of a portion of the bed of the sea and to the wealth which it produces in the form of pearl, oysters, chanks, coral, sponges or other *fructus* of the soil is not inconsistent with the universal right of navigation in the open sea or with the common right of the public to fish in the high seas.' The drafting of article 3 by the International Law Commission seems to be in accordance with the above conclusions: 'The regulation of sedentary fisheries may be undertaken by a State in areas of the high seas contiguous to the territorial sea where such fisheries have long been maintained and conducted by nationals of that State. Where the coastal State has in the past permitted non-nationals to participate in the fishing, it has no right to exclude them in the future. Such regulations, however, will not affect the general status of the areas as high seas. Sedentary fisheries must not result in substantial interference with navigation.'

§ **353a. Australian pearl fisheries.**

The claim could be relied upon with regard to the pearl and beche-de-mer fisheries off Western Australia and Queensland which have been the subject of legislative enactments by both these Australian States, although they stretch out considerably beyond territorial waters."

A clear statement of International law on this

subject is contained in *Hackworth's Digest of International Law*, Vol II, pages 674-675, as follows:

> "Vattel's Statement: 'Who can doubt that the pearl fisheries of Bahrein and Ceylon may lawfully become property?' ceases to cause any difficulty to even the stoutest upholders of the principle that the limits of the territorial belt are not more than three miles if it is realized that the exclusive right to the pearls to be obtained from the banks flowed from the ownership of the bed of the sea where the banks were situated, and not from any claim to maritime jurisdiction over the waters . . .
>
> ". . . Wherever it can be shown that particular oyster beds, pearl banks, chank fisheries, sponge fisheries or whatever may be the particular form of sedentary fishery in question outside the three-mile limit have always been kept in occupation by the Sovereign of the adjacent land, ownership of the soil of the bed of the sea where the fishery was situated may be presumed, and the exclusive right to the produce to be obtained from these fisheries may be based on their being a produce of the soil. Ownership of the soil by the Sovereign of the country under such circumstances must carry with it the right to legislate for the soil so owned and for the protection of the wealth to be derived from it, and no doubt need be felt as to the binding force of the various enactments which have been issued for the protection of these sedentary fisheries outside the three-mile limit . . .
>
> The maintenance of a State's property rights in special areas outside the three-mile limit when

more extensive general claims to sovereignty, jurisdiction and property were abandoned is in no way inconsistent with the principles laid down by Oppenheim, that the sub-soil beneath the bed of the open sea outside the marginal belt of territorial waters is a no man's land, property in which can be acquired on the part of the littoral State through occupation starting from the subsoil beneath the bed of the territorial maritime belt. Tunnelling in the suo-soil for the purposes of mining or communications seems to be the only aspect of the problem which Oppenheim had in mind, but the principles he lays down are in no way inconsistent with the recognition of a right of exclusive ownership arising from long and undisputed occupation of sedentary fisheries lying on the surface of the bed of the sea."

The following discussion on this subject is taken from Volume 35 of the American Journal of International Law (1941), pages 518-19:

"... But there is another type of claim-riparian exploitation or licensing of the sedentary fisheries or subsoil mines or petroleum reserves close to the shore but outside the three-mile limit. Here other considerations enter the problem. Could a country tolerate a permanent foreign occupation or stationary works at its front door, especially if the operations occur on a shallow bank or shelf? Practical considerations would seem to dictate a negative answer. In English history the Crown laid claim to minerals won from mines and workings below the low-water mark under the open sea adjacent to the coast but outside the three-

mile limit. So, the pearl fisheries of Bahrein and Ceylon, extending many miles from shore, have for centuries been regulated by local ordinances of the riparian States, and Vattel seems to have supported the ancient claim of monopoly in these sedentary fisheries. The claim may be said to rest on several theories—the extension of the land to the shallow banks, the long historical use and presumption of acquiescence, the physical occupation, and the special fact that Palk's Bay, if not the Gulf of Mannar, which divides India from Ceylon, may be deemed a constituent portion of the British dominions. Even so, there would be no right to interfere with navigation and surface fishing beyond the three-mile limit . . ."

The foregoing authorities clearly indicate that when a nation or State has possessed and occupied the bed of the Continental Shelf for a long period of time, the sub-soil and sea-bed become the property, and constitute a part of the territorial limits of the coastal State, which has thus effectively occupied it.

C. ACTS OF LOUISIANA LEGISLATURE AND OF CONGRESS REDEFINING LOUISIANA BOUNDARIES

Louisiana's original southern boundary as described in its Act of Admission of April 8, 1812 (2 Stat. 701, 702; 2 Stat. 708) is "to the Gulf of Mexico; thence bounded by the said Gulf to the place of beginning, including all islands within three leagues of the coast." In 1938 Louisiana passed the first Act which declared the extent of its boundaries in the Gulf of

Mexico. In this Act it recited that its boundary has been fixed three leagues from coast in the Act of Admission, but that in view of the increased range of cannon the State was entitled to boundaries, and the Legislature declared that the boundaries extended 27 miles seaward into the Gulf.

Louisiana later, in 1954, passed Act number 33, which redefined the boundaries of the State as three leagues from the coast line, or line dividing the inland waters from the open sea, and declared this to be the boundaries of the State. Pertinent provisions of the Acts of 1938 and of 1954 are set forth hereinbelow, as well as the Acts of Congress which support the redefined boundary set forth in the Louisiana Act of 1954

1. LOUISIANA ACT No. 55 OF 1938

(La. Rev. Stats. 49:1)

AN ACT

To declare the sovereignty of Louisiana along its seacoast and to fix its present seacoast boundary and ownership.

Whereas dominion, with its consequent use, ownership and jurisdiction, over its marginal waters by a State has found support because it is the duty of a State to protect its citizens whose livelihood depends on fishing, or taking from said marginal waters the natural products they are capable of yielding; also,

has found support in that sufficient security must exist for the lives and property of the citizens of the State;

. . .

Whereas, by the Act of Congress of February 20th, 1811, by which the State of Louisiana was admitted to the United States as a State, the southern boundary of Louisiana was fixed as follows: 'thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast';

Whereas, therefore, the gulfward boundary of Louisiana is already located in the Gulf of Mexico three leagues distant from the shore . . .

Whereas, a State can define its limits on the sea;

. . .

Whereas, the State of Louisiana, including all parts thereof and all territory that may be added thereto, forms a part of the United States of America, over which the said United States is authorized to exercise and exercises such powers and jurisdiction as the said United States is authorized by the Constitution of the United States to exercise thereover;

Section 1. Be it enacted by the Legislature of Louisiana, That the gulfward boundary of the State of Louisiana, is hereby fixed and declared to be a line located in the Gulf of Mexico parallel to the three-mile limit as determined according to said ancient principles of international law, which gulfward boundary is located twenty-four marine miles further out in the Gulf of Mexico than the said three-mile limit.

Section 2. That, subject to the right of the government of the United States to regulate foreign and in-

terstate commerce under Section 8 of Article 1 of the Constitution of the United States, and to the power of the government of the United States over cases of admiralty and maritime jurisdiction under Section 2 of Article 3 of the Constitution of the United States, the State of Louisiana has full sovereignty over all of the waters of the Gulf of Mexico and of the arms of the Gulf of Mexico within the boundaries of Louisiana, as herein fixed, and over the beds and shores of the Gulf of Mexico and all arms of the said Gulf within the boundaries of Louisiana, as herein fixed.

Section 3. That the State of Louisiana owns in full and complete ownership the waters of the Gulf of Mexico and of the arms of the said Gulf and the beds and shores of the Gulf of Mexico and the arms of the Gulf of Mexico, including all lands that are covered by the waters of the said Gulf and its arms either at low tide or high tide, within the boundaries of Louisiana, as herein fixed.

Section 4. That this Act shall never be construed as containing a relinquishment by the State of Louisiana of any dominion sovereignty, territory, property or rights that the State of Louisiana already had before the passage of this Act.

Approved by the Governor: June 30, 1938."

2. LOUISIANA ACT No. 33 OF 1954

"AN ACT

To amend and re-enact Section 1 of Title 49 of the

Louisiana Revised Statutes of 1950 relative to state water boundaries; gulfward boundary.

Whereas, under authority of Section 3 of Article IV of the United States Constitution, the United States Congress admitted Louisiana as a State into the Union in April, 1812, and fixed its gulfward boundary at 3 leagues from coast.

Whereas, in compliance with Acts of Congress of February 10, 1807, 2 Stat. 413, and of February 19, 1895, 28 Stat. 672, 33 U.S.C. 151, the coast line of the State of Louisiana was officially designated and defined by bearings, light-houses, buoys and coast objects, as shown in Section 1 herein;

Whereas, the United States Supreme Court has held that the waters inside of the coast line designated and defined under said Act of February 19, 1895, are "as much a part of the inland waters of the United States within the meaning of this Act as the harbor within the entrance" and another Federal Court held that said Act "was for the purpose of defining the inland waters of the United States."

Whereas, the United States Congress, by its "Tidelands" Act, approved May 22, 1953, 67 Stat. 32, recognized and confirmed State ownership of the lands beneath navigable waters within the State's boundaries, and the natural resources, including oil, gas, and all other minerals, and fish, shrimp, oysters, and other marine animal and plant life within such lands and waters; and said Tidelands Act adopted State boundaries in the Gulf of Mexico as they existed at

the time such State became a member of the Union not more than 3 marine leagues into the Gulf of Mexico from the coast line, which "coast line" is defined in said Act as that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters; and

Whereas, the State of Louisiana owns these submerged lands and natural resources within such land and waters in trust for its people, and the economic welfare of the State and the public services dependent upon the State revenues to be derived from these valuable natural resources require that the State's historic boundary be redefined to avoid confusion and to clarify the situation with regard thereto.

Be it enacted by the Legislature of Louisiana:

Section 1. Section 1 of Title 49 of the Louisiana Revised Statutes of 1950 is hereby amended and reenacted to read as follows:

§ 1. Gulfward boundary. The historic gulfward boundary of the State of Louisiana extends a distance into the Gulf of Mexico 3 marine leagues from coast.

The coast or coast line of the State of Louisiana is accepted and approved as designated and defined in accordance with applicable Acts of Congress, as follows: From Ship Island Lighthouse to Chandeleuer Lighthouse; thence in a curved line following the general trend of the seaward, high-water shore lines of the Chandeleuer Islands to the Southwesternmost extremity of Errol Shoal; thence to Pass-a-Loutre lighted

whistle buoy 4 to South Pass lighted whistle buoy 2; thence to Southwest Pass entrance mid-channel lighted whistle buoy; thence to Ship Shoal lighthouse; thence to Calcasieu Pass lighted whistle buoy 1; thence to Sabine Pass lighted whistle buoy 1, as designated and defined under authority of the Act of Congress of February 19, 1895, 28 Stat. 672, 33 U.S.C. 151 as amended, and is shown on the attached chart showing the coast line of the State marked thus - - - and showing the State gulfward boundary by a solid line 3 marine leagues from coast, which chart shall be paraphed by the Speaker of the House of Representatives, the President of the Senate and by the Governor to be identified herewith.

Section 2. That all laws or parts of laws in conflict herewith be and they are hereby repealed with the exception that the designation on the attached plat of the common boundaries of the coastal parishes of the State of Louisiana shall not be taken or interpreted as in any manner changing or affecting the interior or inland boundaries of any said coastal parishes as now existing or fixed by applicable State laws, nor shall said plat be taken or construed, as intending to affect the common maritime boundary between this State and the States of Mississippi and Texas.

Approved by the Governor: June 21, 1954.

3. ACT OF CONGRESS OF FEBRUARY 10, 1807 PROVIDING FOR A SURVEY OF THE COASTS OF THE UNITED STATES

(2 Stat. 413)

AN ACT

To provide for surveying the coasts of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States shall be, and he is hereby authorized and requested, to cause a survey to be taken of the coasts of the United States, in which shall be designated the islands and shoals, with the roads or places of anchorage, within twenty leagues of any part of the shores of the United States; and also the respective courses and distances between the principal capes, or head lands, together with such other matters as he may deem proper for completing an accurate chart of every part of the coasts within the extent aforesaid.

4. ACT OF CONGRESS OF FEBRUARY 19, 1895 DESIGNATING THE LINES DIVIDING THE HIGH SEAS AND THE INLAND WATERS

(28 Stat. 672, 33 U.S.C. 151)

Section 151. **Demarcation of high seas lines.** The Secretary of Commerce is hereby authorized, empowered and directed from time to time to designate and define by suitable bearings or ranges with lighthouses, light vessels, buoys or coast objects, the lines dividing

the high seas from rivers, harbors and inland waters. (Feb. 19, 1895, c. 102, § 2, 28 Stat. 672; Feb. 14, 1903, c. 552, 32 Stat. 829; Mar. 4, 1913, c. 141, 37 Stat. 736.)

5. ACT OF CONGRESS OF JULY 17, 1939, RELATING TO THE REGULATION OF STEAM VESSELS OF THE UNITED STATES

(53 Stat. 1049, 60 Stat. 1097, 46 U.S.C. 224a (12))

"(12) Where used in this section—

(a) the term 'high seas' means all waters outside the line dividing the inland waters from the high seas, as defined in section 151 of Title 33;"

D. LOUISIANA'S HISTORIC BOUNDARIES — TREATIES AND DOCUMENTS RELATING THERETO

1. PROCLAMATION OF LA SALLE, APRIL 9, 1682

In 1933 the Department of the Interior printed an historical sketch from the files of the General Land Office in commemoration of the 150th Anniversary of the Louisiana Purchase. This sketch is entitled "The Louisiana Purchase" and was reprinted by the Government Printing Office in 1955. It reproduces La Salle's Proclamation made at the mouth of the Mississippi River on April 9, 1682 when he took possession of the great expanse of the Louisiana territory on behalf of France. His Proclamation appears on page 4 of the "Louisiana Purchase," as follows:

> "In the name of the most high, mighty, invincible, and victorious prince, Louis the Great,

by the grace of God, King of France and of Navarre, fourteenth of that name, this ninth day of April, one thousand six hundred and eighty-two, I, in virtue of the commission of His Majesty which I hold in my hand, and which may be seen by all whom it may concern, have taken, and do now take, in the name of His Majesty and of his successors to the crown, possession of this country of Louisiana, the seas, harbors, ports, bays, adjacent straits, and all the nations, people, provinces, cities, towns, villages, mines, minerals, fisheries, streams, and rivers comprised in the extent of said Louisiana, from the mouth of the great river St. Louis on the eastern side, otherwise called Ohio, Aligin, Sipore, or Chukagona, and this with the consent of the Chaonanons, Chickachas, and other people dwelling therein, with whom we have made alliance; as also along the river Colbert, or Mississippi, and rivers which discharge themselves therein, from its source, beyond the country of the Kious or Nadoucessions, and this with their consent, and with the consent of the Motantes, Illinois, Mesiganeas, Natches, Koroas, which are the most considerable nations dwelling therein, with whom also we have made alliance, either by ourselves or by others in our behalf, as far as its mouth in* the sea, or Gulf of Mexico, about the twenty-seventh degree of the elevation of the North Pole and also to the mouth of the river of Palms; upon the assurance which we

*The translation in the Louisiana Purchase reads "by the sea" but the word in the French is "dans" which always means in or into in French. See History of North America by Guy Carlton Lee, Vol. III, page 190, 191.

have received from all these nations that we are the first Europeans who have descended or ascended the said river Colbert; hereby protesting against all who may in future undertake to invade any or all of these countries, people, or lands, above described, to the prejudice of the rights of His Majesty, acquired by the consent of the nations herein named. Of which, and all that can be needed, I hereby take to witness those who hear me and demand an act of the notary as required by law."

The Louisiana Purchase sketch then makes the following statement with reference to the title acquired by France by virtue of LaSalle's Proclamation (Page 4):

"Title to French territory in the Mississippi Valley and along the Gulf of Mexico was based upon this voyage and proclamation of LaSalle. These acts of LaSalle were, in fact, the foundation of French ownership, and have been so considered by all nations since 1682. The Louisiana thus claimed embraced two areas of continguous territory — first, the territory drained by the Mississippi River, with all of its tributaries, and second, the territory between the Mississippi River and the River of Palms. The wording of the proclamation is simple and direct, and its meaning seems incapable of distortion or of being misunderstood . . ."

Further reference is made to LaSalle's Proclamation in a letter of March 12th, 1818 from John Quincy Adams, Secretary of State to Don Louis de Onis, En-

voy from Spain, and is reproduced in American State Papers (2d series), Vol. IV, pages 470-474, excerpts from which follow:

> ". . . . three principles, sanctioned alike by immutable justice and the general practice of the European nations which have formed settlements and held possessions in this hemisphere; and, by the application of which to the facts also stated in their note, this question of the western boundary ought then to have been, and eventually must be settled. These principles were—
>
> First. 'That when any European nation takes possession of any extent of seacoast, that possession is understood as extending into the interior country to the sources of the rivers empting within that coast, to all their branches, and the country they cover, and to give it a right in exclusion of all other nations to the same.'
>
> Secondly. 'That whenever one European nation makes a discovery, and takes possession of any portion of this continent, and another afterwards does the same at some distance from it, where the boundary between them is not determined by the principle above mentioned, the middle distance becomes such of course.'
>
> Thirdly. 'That whenever any European nation has thus acquired a right to any portion of territory on this continent, that right can never be dimished or affected by any other Power, by virtue of purchases made, by grants or conquests of the natives within the limits thereof.'
>
> The facts stated in this last mentioned note,

and to which these principles were applied in support of the claim of the United States, under the cession of Louisiana by France to them, were—

1. That the Mississippi, in its whole length to the ocean, was discovered by French subjects from Canada, in 1683.

2. That LaSalle, a Frenchman, with a commission and authority from Louis XIV., discovered by the bay of St. Bernard, and formed a settlement there on the western side of the river Colorado, in the year 1685, and that the possession thus taken in the bay of St. Bernard, in connection with that on the Mississippi, had always been understood, as of right it ought, to extend to the Rio Bravo.

3. That the boundary, thus founded upon possession, was described as forming the limits of Louisisana, in the grant by Louis XIV, to Crozat, in 1712.

4. That it was supported by the testimony of the historical writers, Du Pratz and Champigny; by an historical and political memoir on Louisiana, written by the Count De Vergennes, the minister of Louis XIV; by a chart of Louisiana published in 1762, by Don Thomas Lopez, geographer to the King of Spain; and by a map of De Lisle, of the Academy of Sciences at Paris, revised and republished there in 1782 . . ."

. . . Of all the heroic enterprises which, in the sixteenth and seventeenth centuries, signalized the discoveries of Europeans upon this continent, there is not one of which the evidence is

more certain, authentic, and particular, than of those of LaSalle . . .

. . . . On this journey he was basely assassinated on the 19th of March, 1687, by two of his own men, and left a name among the illustrious discoverers of the new world, second only to that of Columbus, with whose history and adventures his own bear in many particulars a striking resemblance . . .

". . . The Mississippi, from near its source to the ocean, had been discovered by him in an expedition meditated by him for many years before, for which he had obtained the authority from Louis XIV., through the influence and patronage of Colbert. The expedition of Joliet, in 1673, Hennepin says, was only an envious rival attempt to forestal the great design which was even then known to be intended by LaSalle, and for which he had already been making laborious and expensive preparations. Joliet reached the Mississippi, and returned without making any other discovery or any settlement; but LaSalle's undertaking has every characteristic of sublime genuis, magnanimous enterprise, and heroic execution. To him, and to him alone, the people of this continent are indebted for the discovery, from its source to the ocean, of the Mississippi, the father of the floods; and of the numberless millions of freemen destined in this and future ages to sail on his bosom, and dwell along his banks, and those of his tributary streams, there is not one but will be deeply indebted for a large portion of the comforts and enjoyments of life to the genius and energy of LaSalle . . ."

2. SPANISH POSSESSION OF LOUISIANA — TREATY OF MADRID SIGNED AT THE ESCURIAL, OCTOBER 28, 1790

Journal of the House of Commons
December 3, 1790, Page 30

By secret treaty executed at Fontainebleau on November 3, 1762, France ceded the Louisiana territory to Spain. Later, by a secret treaty of St. Ildefonso signed between the same parties October 1, 1800, the Louisiana territory was retroceded by Spain to France. During this period of Spanish possession from 1762 to 1800 England and Spain entered into a treaty whereby each recognized the territorial waters of the other in the Western Hemisphere as extending 10 leagues seaward from their shores. This agreement and recognition is embodied in the treaty of Madrid signed at the Escurial on July 24, 1790, and reads in part as follows:

> " . . . Their Britannick and Catholick Majesties, being desirous of terminating, by a speedy and solid Agreement, the Differences which have lately arisen between the Two Crowns, have judged that the best Way of attaining this salutary Object would be that of an amicable Arrangement; which, setting aside all retrospective Discussion of the Rights and Pretensions of the Two Parties, should fix their respective Situation for the future on a Basis conformable to their true Interests, as well as to the mutual Desire with which their said Majesties are animated, of

establishing with each other, in every Thing, and in all Places, the most perfect Friendship, Harmony, and good Correspondence . . .

Article III.

And, in order to strengthen the Bonds of Friendship, and to preserve in future a perfect Harmony and good Understanding between the Two contracting Parties, It is agreed, That their respective Subjects shall not be disturbed or molested, either in navigating or carrying on their Fisheries in the Pacific Ocean, or in the South Seas, or in landing on the Coasts of those Seas, in Places not already occupied, for the Purpose of carrying on their Commerce with the Natives of the Country, or of making Settlements there; the whole subject, nevertheless, to the Restrictions and Provisions specified in the Three following Articles.

Article IV.

His Britannick Majesty engages to take the most effectual Measures to prevent the Navigation and Fishery of His Subjects in the Pacific Ocean, or in the South Seas, from being made a Pretext for illicit Trade with the Spanish Settlements; and, with this View, it is moreover expressly stipulated, that British Subjects shall not navigate, or carry on their Fishery, in the said Seas, within the Space of Ten Sea Leagues from any Part of the Coasts already occupied by Spain.

Article V.

It is agreed, That, as well in the Places which are to be restored to the British Subjects, by vir-

ture of the First Article, as in all other Parts of the Northwestern Coasts of North America, or of the Islands adjacent, situated to the North of the Parts of the said Coasts already occupied by Spain, wherever the Subjects of either of the Two Powers shall have made Settlements since the Month of April 1789, or shall hereafter make any, the Subjects of the other shall have free Access, and shall carry on their Trade without any Disturbance or Molestation.

Article VI.

It is further agreed, with respect to the Eastern and Western Coasts of South America, and to the Islands adjacent, That no Settlement shall be formed hereafter, by the respective Subjects, in such Parts of those Coasts as are situated to the South of those Parts of the same Coasts, and of the Islands adjacent, which are already occupied by Spain: Provided that the said respective Subjects shall retain the Liberty of landing on the Coasts and Islands so situated, for the Purposes of their Fishery, and of erecting thereon Huts, and other temporary Buildings, serving only for, those Purposes."

3. TREATY FOR THE CESSION OF LOUISIANA FROM FRANCE TO THE UNITED STATES, SIGNED AT PARIS, APRIL 30, 1803

8 Stat. 200

Article I

"Whereas, by the Article the third of the Treaty concluded at St. Idelfonso the 9th Vendemiaire, an 9 (1st October, 1800), between the First

Consul of the French Republic and his Catholic Majesty, it was agreed as follows:

'His Catholic Majesty promises and engages on his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to his Royal Highness the Duke of Parma, the Colony or Province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other States.'

And whereas in pursuance of the treaty and particularly of the third article, the French Republic has an incontestible title to the domain and to the possession of the said territory: The First Consul of the French Republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French Republic, for ever and in full Sovereignty, the said territory with all its rights and appurtances, as fully and in the same manner as they have been acquired by the French Republic, in virtue of the above-mentioned treaty concluded with his Catholic Majesty.

Article II

In the cession made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and Squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private property . . .

Article III

The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property and in the Religion which they profess."

4. ACT OF CONGRESS OF MARCH 26, 1804 CREATING THE TERRITORY OF ORLEANS

2 Stat. 283

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That all that portion of country ceded by France to the United States, under the name of Louisiana, which lies south of the Mississippi territory, and of an east and west line to commence on the Mississippi river, at the thirty-third degree of north latitude, and to extend west to the western boundary of the said cession, shall constitute a territory of the United States, under the name of the territory of Orleans; the government thereof shall be organized and administered as follows:

* * * *

Sec. 12. The residue of the province of Louisiana, ceded to the United States, shall be called the district of Louisiana, the government whereof shall be organized and administered as follows . . .

5. ACT OF CONGRESS OF FEBRUARY 20, 1811 TO ENABLE THE PEOPLE OF THE TERRITORY OF ORLEANS TO FORM A CONSTITUTION AND STATE GOVERNMENT

2 Stat. 641

SECTION 1 — BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the inhabitants of all that part of the territory or country ceded under the name of Louisiana, by the treaty made at Paris on the thirtieth day of April, one thousand eight hundred and three, between the United States and France, contained within the following limits, that is to say: beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of the said river, including all islands to the thirty-second degree of latitue; thence due north, to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the river Mississippi; thence down the said river to the river Iberville; and from thence along the middle of the said river and lakes Maurepas and Pontchartrain, to the gulf of Mexico; thence bounded by the said gulf to the place of beginning; including all islands within three leagues of the coast, be, and they are hereby authorized to form for themselves a constitution and state government, and to assume such name as they may deem proper, under the provisions and upon the conditions herein after mentioned.

6. ACT OF CONGRESS DATED APRIL 8, 1812 FOR THE ADMISSION OF THE STATE OF LOUISIANA INTO THE UNION

2 Stat. 701

. . . BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the said state shall be one, and is hereby declared to be one of the Union on an equal footing with the original states, in all respects whatever, by the name and title of the state of Louisiana: *Provided*, that it shall be taken as a condition upon which the said state is incorporated in the Union, that the river Mississippi, and the navigable rivers and waters leading into the same, and into the gulf of Mexico, shall be common highways, and for ever free, as well to the inhabitants of the said state as to the inhabitants of other states and the territories of the United States, without any tax, duty, impost or toll therefor, imposed by the said state, and that the above condition, and also all other the conditions and terms contained in the third section of the act, the title whereof is herein before recited, shall be considered, deemed and taken, fundamental conditions and terms, upon which the said state is incorporated in the Union.

Sec. 2. AND BE IT FURTHER ENACTED, That until the next general census and apportionment of representatives, the said state shall be entitled to one representative in the House of Representatives of

the United States; and that all the laws of the United States, not locally inapplicable, shall be extended to the said state, and shall have the same force and effect within the same, as elsewhere within the United States...

7. CONSTITUTION OF LOUISIANA, ADOPTED JANUARY 22, 1812

(Preamble)

We, the Representatives of the People of all that part of the Territory or country ceded under the name of Louisiana, by the treaty made at Paris, on the 30th day of April, 1803, between the United States and France, contained in the following limits, to wit; beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all its islands, to the thirty second degree of latitude—thence due north to the Northernmost part of the thirty third degree of north latitude—thence along the said parallel of latitude to the river Mississippi—thence down the said river to the river Iberville, and from thence along the middle of the said river and lakes Maurepas and Pontchartrain to the Gulf of Mexico—thence bounded by the said Gulf to the place of beginning, including all islands within three leagues of the coast—in Convention Assembled by virtue of an act of Congress, entitled "an act to enable the people of the Territory of Orleans to form a constitution and State government and for the admission of said State into the Union on an equal footing with the original States, and for

other purposes;" In order to secure to all the citizens thereof the enjoyment of the right of life, liberty and property, do ordain and establish the following constitution or form of government, and do mutually agree with each other to form ourselves into a free and independent State, by the name of the State of Louisiana.

E. GULF OF MEXICO — SOVEREIGNTY OVER TERRITORIAL WATERS

1. PROCLAMATION OF LA SALLE APRIL 9, 1682

(The "Louisiana Purchase," page 4)

LaSalle's Proclamation is set forth in Section C of this Appendix hereinabove and reference is made to it here since it has a particular bearing on the extent of territorial waters claimed and possessed by France in the Gulf of Mexico. In that Proclamation LaSalle took possession of the Louisiana Territory extending into the Gulf of Mexico to the 27th degree of elevation of the North Pole

2. TREATY OF MADRID, DECEMBER 3, 1790

In this Treaty Great Britain and Spain agreed that sovereignty over the territorial waters in North and South America would extend seaward a distance of 10 leagues from their shores. Excerpts from this Treaty appear in Section C of this Appendix and need not be repeated here.

3. UNITED STATES & SPAIN—TREATY OF FRIENDSHIP, LIMITS AND NAVIGATION, SIGNED AT SAN LORENZO et REAL, OCTOBER 27, 1795

(8 Stat. 138, 2 Miller's Treaties And Other International Acts Of The United States of America, page 318)

"Art. IV

It is likewise agreed that the Western boundary of the United States which separates them from the Spanish Colony of Louisiana, is in the middle of the channel or bed of the River Mississippi, from the Northern boundary of the said States to the completion of the thirty first degree of latitude North of the Equator. And his Catholic Majesty has likewise agreed that the navigation of the said river in its whole breadth from its source to the ocean shall be free only to his subjects, and the citizens of the United States, unless he should extend this privilege to the subjects of other powers by special convention."

"Art. VI

Each party shall endeavour, by all means in their power, to protect and defend all vessels and other effects belonging to the citizens or subjects of the other, which shall be within the extent of their jurisdiction by sea or by land * * * *"

4. UNITED STATES AND SPAIN—TREATY OF AMITY SETTLEMENT AND LIMITS SIGNED AT WASHINGTON, FEBRUARY 22, 1819

(8 Stat. 252, 3 Miller's Treaties)

"Art. 2

His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the Eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said provinces, all public lots and Squares, vacant Lands, public edifices, fortifications, barracks and other buildings, which are not private property, archives and documents, which relate directly to the property and sovereignty of said provinces, are included in this article. * * *

"Art. 3

The boundary line between the two countries, west of the Mississippi, shall begin on the Gulph of Mexico, at the mouth of the River Sabine in the sea, continuing north, along the western bank of that River, to the 32d degree of latitude * * *"

The objects of paramount consideration in the making of the foregoing Treaty are thus stated in the memoirs of John Quincy Adams, Volume IV, page 290 referred to in the notes of the Treaty appearing on Page 45 of Volume 3, Miller's Treaties. The following is quoted from the memoirs of President Adams.

"* * * The removal of all apprehension of

a war with Spain, the consolidation of our territorial possessions, *the command of the Gulf of Mexico, the recognized extension of the South Sea*, and the satisfaction of so large an amount of the claims of our citizens upon Spain, were objects of such paramount consideration, and the attainment of them would raise our standing and character so high in the estimate of the European powers, that the land was of very trifling comparative consequence. * * *" (Emphasis Supplied)

5. UNITED STATES RECOGNITION OF BOUNDARIES OF THE TEXAS REPUBLIC

a. Constitution of Texas, Adopted March 17, 1836 —1 Gammel's Laws of Texas 1077

"That no inconvenience may arise from the adoption of this constitution, it is declared by this convention that all laws now in force in Texas, and not inconsistent with this constitution, shall remain in full force until declared void, repealed, altered, or expire by their own limitation."

b. Act of Congress Of The Republic of Texas Defining the Boundaries of The Republic of Texas — 1 Gammel's Laws of Texas, 1193-1194.

"Sec. 1. Be it enacted by the senate and house of representatives of the republic of Texas, in congress assembled, That from and after the passage of this act, the civil and political jurisdiction of this republic be, and is hereby declared to extend to the following boundaries, to-wit: beginning at the mouth of the Sabine river, and running west along the Gulf

of Mexico three leagues from land, to the mouth of the Rio Grande, thence up the principal stream of said river to its source, thence due north to the forty-second degree of north latitude, thence along the boundary line as defined in the treaty between the United States and Spain, to the beginning: and that the president be, and is hereby authorized and required to open a negotiation with the government of the United States of America, so soon as in his opinion the public interest requires it, to ascertain and define the boundary line as agreed upon in said treaty."

c. *Special Message From President Andrew Jackson To The United States House of Representatives of December 22, 1836. — Congressional Globe, 24th Cong. 2nd Session, page 45*

"the title of Texas to the territory she claims is identified with her independence."

d. *Resolution of United States Senate March 1, 1837 Recognizing The Independence of Texas — Congressional Globe, 24th Cong. 2nd Session, pages 45, 83.*

"Resolved, that the State of Texas having established and maintained an independent Government, capable of performing those duties, foreign and domestic, which appertain to independent Governments, and it appearing that there is no longer any reasonable prospect of successful prosecution of the war by Mexico against said State it is expedient and proper and in conformity with the laws of nations and the

practice of this Government in like cases, that the indepe' dent political existence of said state be acknowledged by the Government of the United States."

e. Treaty For Marking The Boundary Between The United States of America and the Republic of Texas Signed at Washington April 25, 1838

8 Stat. 511, 4 Miller's Treaties 133.

"Convention between the United States of America and the Republic of Texas, for marking the boundary between them.

Whereas the treaty of limits made and concluded on the twelfth day of January, in the year of our Lord one thousand eight hundred and twenty-eight between the United States of America on the one part and the United Mexican States on the other, is binding upon the Republic of Texas, the same having been entered into at a time when Texas formed a part of the said United Mexican States:

And whereas it is deemed proper and expedient in order to prevent future disputes and collisions between the United States and Texas in regard to the boundary between the two countries as designated by the said treaty, that a portion of the same should be run and marked without unnecessary delay:

The President of the United States has appointed John Forsyth their plenipotentiary, and the President of the Republic of Texas has appointed Memucan Hunt its plenipotentiary:

And the said plenipotentiaries having ex-

changed their full powers, have agreed upon and concluded the folowing articles:

Art. 1. Each of the contracting parties shall appoint a commissioner and surveyor, who shall meet before the termination of twelve months from the exchange of the ratifications of this Convention, at New Orleans, and proceed to run and mark that portion of the said boundary which extends from the mouth of the Sabine, where that river enters the Gulf of Mexico, to the Red River. They shall make out plans and keep journals of their proceedings and the result agreed upon by them shall be considered as part of this Convention, and shall have the same force as if it were inserted therein. The two governments will amicably agree respecting the necessary articles to be furnished to those persons, and also as to their respective escorts, should such be deemed necessary.

Art. 2. And it is agreed that until this line shall be marked out, as is provided for in the foregoing article, each of the contracting parties shall continue to exercise jurisdiction in all territory over which its jurisdiction has hitherto been exercised, and that the remaining portion of the said boundary line shall be run and marked at such time hereafter as may suit the convenience of both the contracting parties, until which time each of the said parties shall exercise without the interference of the other, within the territory of which the boundary shall not have been so marked and run, jurisdiction to the same extent to which it has been hertofore usually exercised."

f. Notes, Miller's Treaties

The following is taken from the notes appended to the foregoing Treaty in Volume 4 of Miller's Treaties, pages 135-136:

"*The Negotiations*

Each of the two Governments from the beginning of their relations regarded the boundary fixed by the earlier treaties of the United States with Spain and with Mexico (Documents 41 and 60) as binding, so far as concerned the line between the United States and the Repubic of Texas. The Government of the United States was so informed by the representatives of Texas as early as January 11, 1837 (Garrison, Diplomatic Correspondence of Texas, pt. 1, 175); the attitude of that Goverment at no time varied in that regard (ibid., 232, 279, 295); indeed, the Government of Texas appointed a commissioner to run the line accordingly (ibid., 252, August 4, 1837; 279, December 31, 1837). The boundaries of Texas, as claimed by that Government, were thus described in the intructions of March 21, 1838, from R. A. Irion, Secretary of State of Texas, to Memucan Hunt (ibid, 318-20):

The present boundaries of Texas as fixed by an act of Congress are as follows, viz-Beginning at the mouth of the Sabine River and running west along the Gulf of Mexico three leagues from land to the mouth of the Rio Grande; thence up the principal branch of said river to its source, thence north to the forty second degree of north

latitude; thence along the boundary line as defined in the treaty between the United States and Spain to the beginning.

That description of the boundaries of Texas was taken almost literally from the Texas act of December 19, 1836, 'to define the Boundaries of the Republic of Texas', which contained the following provisions (Laws of the Republic of Texas, I, 133-34):

That from and after the passage of this act, the civil and political jurisdiction of this republic be, and is hereby declared to extend to the following boundaries, to wit: beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande, thence up the principal stream of said river to its source, thence due north to the forty-second degree of north latitude, thence due north to the forty-second degree of north latitude, thence along the boundary line as defined in the treaty between the United States and Spain, to the beginning; and that the president be, and he is hereby authorized and required to open a negotiation with the government of the United States of America, so soon as in his opinion the public interest requires it, to ascertain and define the boundary line as agreed upon in said treaty."

* * * * * * *

6. TREATY OF GUADALUPE HIDALGO BETWEEN THE UNITED STATES AND MEXICO SIGNED AT GUADALUPE HIDALGO FEBRUARY 2, 1848

(9 Stat. 922, 5 Miller's Treaties 207)

"Article V.

The Boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of it's deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence, westwardly, along the whole southern boundary of New Mexico (which runs north of the town called Paso) to it's western termination; thence, northward, along the western line of New Mexico, until it intersects the first branch of the river Gila; (or if it should not intersect any branch of that river, then, to the point on the said line nearest to such branch, and thence in a direct line to the same;) thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence, across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean.

* * * And, in order to preclude all difficulty in tracing upon the ground the limit separating Upper and Lower California, it is agreed that the

said limit shall consist of a straight line, drawn from the middle of the Rio Gila, where it unites with the Colorado, to a point on the coast of the Pacific Ocean, distant one marine league due south of the southernmost point of the Port of San Diego, according to the plan of said port made in the year 1782 by Don Juan Pantoja, second sailing master of the Spanish fleet, and published at Madrid in the year 1802, in the Atlas to the voyage of the schooners Sutil and Mexicana: of which plan a copy is hereunto added, signed and sealed by the respective plenipotentiaries."

* * *

7. THE GADSDEN TREATY BETWEEN THE UNITED STATES AND MEXICO, SIGNED AT MEXICO CITY DECEMBER 30, 1853

(10 Stat. 1031, 6 Miller's Treaties 293)

"Article 1

The Mexican Republic agrees to designate the following as her true limits with the United State for the future: retaining the same dividing line between the two California's, as already defined and established, according to the 5th Article of the Treaty of Guadalupe Hidalgo, the limits between the Two Republics shall be as folows: Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, as provided in the fifth article of the treaty of Guadalupe Hidalgo; thence as defined in the said article, up the middle of that river to the point where the parallel of 31° 47′ north latitude crosses the same; thence due west one hundred miles,

thence south to the parallel of 31° 20′ north latitude; thence along the said parallel of 31° 20′ to the 111th meridian of longitude west of Greenwich; thence in a straight line to a point on the Colorado river twenty english miles below the junction of the Gila and Colorado rivers; thence up the middle of the said river Colorado until it intersects the present line between the United States and Mexico.

* * *

The dividing line thus established shall, in all time, be faithfully respected by the two Governments without any variation therein, unless of the express and free consent of the two, given in conformity to the principles of the Law of Nations, and in accordance with the Constitution of each country respectively.

* * *

In the notes to the above Treaty found in Volume 4 of Miller's Treaties, various boundary maps that were authenticated pursuant to the provisions of the Treaty are described. Map No. 1 is thus described on page 398:

"Map 1 covers the boundary from a point in the Gulf of Mexico, 'three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte . . . from thence, up the middle of that river, following the deepest channel', to a point above Brownsville, Texas. It is entitled, 'Boundary Between The United States And Mexico Agreed upon by the Joint Commission under the Treaty of Guadalupe Hidalgo; Surveyed in 1853 under the direction of Bvt. Major W. H. Emory, Corps of Topographi-

cal Engineers, Chief Astronomer and Surveyor; by Mr. Cha Radziminski, Prin. Ass. Surveyor, and Mr. Arthur Schott, Ass. Surveyor."

8. CONSTITUTION OF THE STATE OF FLORIDA 1868

(Thorpe's "Federal and State Constitutions," Vol. 2, pages 704, 706)

"Article II

Boundaries

The Boundaries of the State of Florida shall be as follows: Commencing at the mouth of the river Perdido; from thence up the middle of said river to where it intersects the south boundary-line of the State of Alabama on the thirty-first degree of north latitude; thence due east to the Chattahoochee River; thence down the middle of said river to its confluence with the Flint River; from thence straight to the head of the Saint Mary's River; thence down the middle of said river to the Atlantic Ocean; thence south-eastwardly, along the coast, to the edge of the Gulf Stream; thence southwestwardly, along the edge of the Gulf Stream and Florida Reefs, to and including the Tortugas Islands; thence northwestwardly to a point five leagues from the mainland; thence northwestwardly five leagues from the shore, including all islands, to a point five leagues due south from the middle of the mouth of Perdido River; thence to the place of beginning."

The Constitution of the State of Florida quoted above was approved by Act of Congress of February 25, 1868. (See 15 Stat. 73)

9. ACT OF CONGRESS OF AUGUST 15, 1914 PROHIBITING ANY CITIZEN OF THE UNITED STATES FROM TAKING SPONGES IN THE WATERS OF THE GULF OF MEXICO OUTSIDE OF STATE TERRITORIAL LIMITS

(38 Stat. 692, 16 U.S.C. 781)

"§781. Taking or catching, in waters of Gulf or Straits of Florida, commercial sponges of less than prescribed size, and landing or possession of same.

It is unlawful for any citizen of the United States, or person owing duty of obedience to the laws of the United States, or any boat or vessel of the United States, or person belonging to or on any such boat or vessel, to take or catch, by any means or method, in the waters of the Gulf of Mexico or the Straits of Florida outside of State territorial limits, any commercial sponges measuring when wet less than five inches in their maximum diameter, or for any person or vessel to land, deliver, cure, offer for sale, or have in possession at any port or place in the United States, or on any boat or vessel of the United States, any such commercial sponges. Aug. 15, 1914, c. 253, § 1, 38 Stat. 692."

The foregoing treaties and documents relate to the *boundaries* and the territory of the United States, and its predecessors in title, in the Gulf of Mexico. It is significant to note that although earlier treaties

fixed the limits far into the sea, the United States has always assented and recognized a boundary three leagues into the Gulf. The Act of Congress of August 15, 1914, last quoted specifically recognizes State ownership of this marginal belt in the sea.

F. EUROPEAN TREATIES AND INTERNATIONAL DOCUMENTS RELATING TO SOVEREIGNTY OVER TERRITORIAL WATERS AND SUBMERGED LANDS IN AMERICA PRIOR TO AND AT THE TIME OF THE ADMISSION OF LOUISIANA TO THE UNION

1. TREATY OF WESTPHALIA—1648

Treaty of peace between Spain and the United provinces of the low countries made at Munster the 30th day of January, 1648.

(British and Foreign State papers, Vol. 1, pages 577-581)

"V. The navigation and trade to the East and West Indies, shall be kept up according and conformably to the Grants made or to be made for that effect, for the security whereof the present Treaty shall serve, and the Ratification thereof on both sides, which shall be obtained: and in the said Treaty shall be comprehended all Potentates, Nations, and People, with whom the said Lords, the States, or Members of the East and West India Companies in their name, within the limits of their said Grants, are in friendship and alliance.

And both the aforesaid Lord, the King and the States respectively, shall continue in possession of such Lordships, Cities, Castles, Towns, Fortresses, Countries and commerce, in the East and West Indies, as also in Brazil, upon the coasts of Asia, Africa, and America, respectively, as the said Lords, the King and the States respectively, hold and possess, comprehending therein particularly the Places and Forts which the Portuguese have taken from the Lords and States since the year 1641, as also the Forts and Places which the said Lords and States shall chance to acquire and possess after this, without infraction of the present Treaty.

VI. And as to the West Indies, the Subjects and Inhabitants of the Kingdoms, Provinces, and Lands of the said Lords, the King and States respectively, shall forbear sailing to, and trading in any of the Harbours, Places, Forts, Lodgments or Castles, and all others possessed by the one or the other Party, viz., the Subjects of the said Lord the King shall not sail to or trade in those held and possessed by the said Lord the King. And among the places held by the said Lords the States, shall be comprehended the places in Brazil, which the Portuguese took out of the hands of the States, and have been in possession of ever since the year 1641, as also all the other places which they possess at present, so long as they shall continue in the hands of the said Portuguese, anything contained in the preceding Article notwithstanding.

XXIII. It shall not be lawful to come ashore, enter, or stop at the Ports, Harbours, Shallows, or Roads of one another, with Men-of-War and

Soldiers, in such number as may cause suspicion, without the leave and permission of him to whom the said Ports and Harbours, Shallows ,and Roads belong, unless they are forced in by storm, or obliged thereto through necessity, or to avoid the dangers of the sea."

2. TREATY OF UTRECHT—1713

A treaty of peace and friendship between Great Britain and France March 4, 1713.

(Journal of the House of Commons
1713 pages 329-330)

"X.

The said most Christian King shall restore to the Kingdom and Queen of Great Britain, to be possessed in full Right for ever, the Bay and Straits of Hudson, together with all lands, seas, sea-coasts, rivers, and places, situate in the said Bay and Straits, and which belong thereunto; no tracts of land, or of sea being excepted, which are at present possessed by the subjects of France; * * * But it is agreed, on both sides, to determine, within a Year, by Commissaries to be forthwith named by each Party, the Limits which are to be fixed between the said Bay of Hudson and the Places appertaining to the French; which Limits both the British and French Subjects shall be wholly forbid to pass over, or to go to each other by Sea, or by Land; the same Commissaries shall also have orders to describe and settle, in like manner, the Boundaries between the other British and French Colonies in those parts."

"XII.

The most Christian King shall take care to have delivered to the Queen of Great Britain, on the same Day that the ratifications of this treaty shall be exchanged, solemn and authentic letters or instruments, by virtue whereof it shall appear, that the Island of St. Christopher's is to be possessed alone hereafter by British Subjects; likewise all Nova Scotia or Accadie, with its ancient Boundaries; as also the City of Port Royal, now called Annapolis Royal; and all other things in those parts, which depend on the said lands and island; together with the dominion, propriety, and possession, of the said islands, lands, and places, and all right, whatsoever, by treaties, or by any other way, obtained, which the most Christian King, the Crown of France, or any of the subjects thereof, have hitherto had to the said islands, lands, and places, and the inhabitants of the same, are yielded, and made over, to the Queen of Great Britian, and to her Crown, forever, as the most Christian King doth to present yield, and made over, all the particulars abovesaid; and that in such ample manner and form, that the subjects of the most Christian King shall hereafter be excluded from all king of fishing in the said seas, bays, and other places, on the coasts of Nova Scotia; that is to say, on those which lie towards the East, within Thirty Leagues, beginning from the island commonly called Sable, inclusively, and thence stretching along towards the Southwest."

"XIII.

The island called Newfoundland, with the adjacent islands, shall, from this time forward,

belong, of right, wholly to Britain * * * But it shall be allowed to the subjects of France to have a fishery, and to dry their fish, on land, in that part only, and in no other besides that, of the said island of Newfoundland, which stretches from the place called Cape Bonavista to the northern point of the said island; and, from thence running down by the western side, reaches as far as the Place called Point Riche: but the island called Cape Breton, as also all others, both in the Mouth of the River of St. Laurance, and in the Gulf of the same name, shall hereafter, of right, belong to the French; and the most Christian King shall have all manner of Liberty to fortify any place or places there."

"XXV.

The Treaty of Peace, made this day, between his Sacred Royal most Christian Majesty, and his Royal Highness the Duke of Savoy, is particularly included in this Treaty, as an essential part of it; and is confirmed by it, in the same manner as if it were, word for word, inserted therein; her Royal Majesty of Great Britain declaring expressly, that she will be bound by the stipulations of security and guaranty promised therein, as well as by those which she has formerly taken upon herself."

"XXVI.

The most Serene King of Sweden, with his Kingdoms, Dominions, Provinces, and Rights; as also the Great Duke of Tuscany; the Republic of Genoa; and the Duke of Parma; are, in the best manner, included in this Treaty."

"XVII.

Their Majesties have also been pleased to comprehend in this Treaty the Hans Towns; namely, Lubeck, Bremen, and Hamburg, and the City of Dantizick; with this effect, that, as soon as the General Peace shall be concluded, the Hans Towns, and the City of Denizick, may, for the future, as common friends, enjoy the ancient advantages which they have heretofore had in the benefits of trade, either by Treaties, or by old Custom."

"XXVIII.

Those shall be comprehended in this present Treaty of Peace, who shall afterwards be named by common consent on the one Part, and on the other, before the exchange of the ratifications, or within six months."

3. TREATY OF PEACE AND FRIENDSHIP BETWEEN GREAT BRITAIN AND SPAIN CONCLUDED AT UTRECHT, JULY 2-3, 1713

(From European Treaties Bearing On the History of the United States, Davenport, Volume 3, pages 227-231)

"Translation.

Phillip, by the grace of God king of Castile, Leon, Aragon, the two Sicilies, Jerusalem, Navarre, Granada, Toledo, Valencia, Galicia, Majorea, Seville, Sardinia, Cordova, Corsica, Murcia, Jaen, the two Algarves, Algeciras, Gibraltar, the Canary Islands, the East and West Indies, the islands

and mainland of the Ocean, archduke of Austria, duke of Burgundy, Brabant, and Milan, count of Hapsburg, Flanders, Tyron, and Barcelona, lord of Biscays and Molina, etc. Whereas there has been concerted, concluded, and signed, in the city of Utrecht, on the thirteenth of July this present year, by my extraordinary plenipotentiary ambassadors and those of the Most Serene Queen of Great Britain, my very dear and very beloved sister and cousin, a treaty of peace and friendship, the tenor of which in the Latin language, is as follows: * * *

8. That there be a free use of navigation and commerce between the subjects of the two kingdoms, as it was theretofore, in time of peace, and before the declaration of this late war, in the reign of Charles the Second, of glorious memory, Catholic king of Spain, according to the treaties of friendship, alliance, and commerce, which were formerly made between the two nations, according to ancient customs, letters patent, cedulas, and other particular acts, and also according to the treaty or treaties of commerce which have now been, or will forthwith be made at Madrid. Since however among other conditions of the general peace, it has been by common consent established as a chief and fundamental rule that the exercise of navigation and commerce to the Spanish West Indies should remain in the same state as it was in the time of the aforesaid King Charles the Second, that therefore this rule may hereafter be observed with inviolable faith and in a manner never to be broken, and thereby all causes of distrust and suspicion concerning that matter may be pre-

vented and removed, it is especially agreed and concluded that no license, nor any permission at all, shall at any time be given either to the French or to any nation whatever, in any name or under any pretense, directly or indirect, to sail, to traffic, or to introduce negroes, goods, merchandises, or any things whatsoever, into the dominions subject to the crown of Spain in America, except what may be agreed upon by the treaty or treaties of commerce abovesaid, and the rights and privileges granted in a certain convention, commonly called the Asiento de Negros, whereof mention is made in the twelfth article, and except also whatsoever the said Catholic King, or his heirs or successors, shall promise by any contract or contracts for the introduction of negroes into the Spanish West Indies, that shall be made after that the convention of the Assiento de Negros abovementioned shall have been determined. And that more strong and full precautions may be taken on both sides, as abovesaid, concerning the navigation and commerce to the West Indies, it is hereby further agreed and concluded that neither the Catholic King, nor any of his heirs and successors whatsoever, shall sell, yield, pawn, transfer, or by any means or under any name, alienate from them and from the crown of Spain, to the French or to any other nations whatever, any jurisdictions, dominions, or territories, or any part thereof, belonging to Spain in America. On the contrary, that the Spanish dominions in America may be preserved whole and entire, the Queen of Great Britain engages that she will endeavor and give assistance to the Spaniards, that the ancient limits of their

dominions in America be restored and settled as they stood in the time of the abovesaid Catholic King Charles the Second, if it shall appear that they have in any manner, or under any pretext, been broken into or lessened in any part, since the death of the aforesaid Catholic King Charles the Second.

* * *

15. Their royal Majesties on both parts renew and confirm all treaties of peace, friendship, alliance, and commerce, made heretofore and concluded between the crowns of Great Britain and Spain, and the said treaties are hereby renewed and confirmed in as full and ample manner as if they were now particularly here inserted; that is to say, as far as they are not found to be contrary to the treaties of peace and commerce which were the last made and signed. * * *"

4. PRELIMINARY ARTICLES OF PEACE SIGNED AT FONTAINEBLEAU NOVEMBER 3, 1762, BY GREAT BRITAIN, SPAIN AND FRANCE

(From the Journal of the House of Commons Vol. 29, pages 364-367)

"Article III.

The Subjects of France shall have the liberty of fishing and drying on a part of the coast of the island of Newfoundland, such as it is specified in the 13th Article of the Treaty of Utrecht, which Article shall be confirmed and renewed by the approaching Definitive Treaty,

except what regards the Island of Cape Breton, as well as the other islands in the Mouth, and in the Gulf of Saint Lawrence: And his Britannic Majesty consents to leave to the Most Christian King's Subjects the liberty to fish in the Gulf of Saint Lawrence, on condition that the subjects of France do not exercise the said fishery but at the distance of three leagues from all the coasts belonging to Great Britain, as well those of the Continent, as those of the islands situated in the said Gulf of Saint Lawrence. And as to what relates to the fishery out of the said gulf, his Most Christian Majesty's Subjects shall not exercise the fishery but at the distance of Fifteen Leagues from the coasts of the island of Cape Breton.

Article XVIII.

The King of Great Britain shall restore to Spain all that he has conquered in the Island of Cuba, with the Fortress of the Havannah; and that Fortress, as well as all the other Fortresses of the said island, shall be restored in the same condition they were in when they were conquered by His Britannic Majesty's Arms.

Article XIX

In consequence of the restitution stipulated in the preceding Article, his Catholic Majesty cedes and guaranties, in full right, to His Britannic Majesty, all that Spain possesses on the Continent of North America, to the east, or to the Southeast, of the River Mississippi. * * *

Article XX.

The King of Portugal, His Britannic Majesty's Ally, is expressly included in the present preliminary articles, and their Most Christian and Catholic Majesties engage to re-establish the ancient Peace and Friendship between them and his most Faithful Majesty. * * *"

5. DEFINITIVE TREATY OF PEACE, SIGNED AT PARIS, FEBRUARY 10, 1763, BETWEEN GREAT BRITAIN, SPAIN AND FRANCE

(Journal of the House of Commons, Vol. 29, pages 588-594)

"Article I.

There shall be a Christian, universal, and perpetual peace as well by Sea as by Land, and a sincere and constant Friendship shall be re-established between their Britannic, Most Christian, Catholic, and Most Faithful Majesties, and between their heirs and successors, Kingdoms, dominions, provinces, countries, subjects, and vassals, of what quality or condition soever they be, without exception of places, or persons. * * *

Article II.

The Treaties of West Phalia of 1648, those of Madrid between the Crowns of Great Britain and Spain of 1667 and 1670, the Treaties of Peace of Nimuguen of 1678 and 1679, of Ryswick of 1697, those of Peace and of Commerce of Utrecht of 1713, that of Baden of 1714, the

Treaty of the Triple Alliance of the Hague of 1717, that of the quadruple Alliance of London of 1718, the Treaty of Peace of Vienna of 1738, the Definitive Treaty of Aix la Chapelle of 1748, and that of Madrid, between the Crowns of Great Britain and Spain, of 1750, as well as the Treaties between the Crowns of Spain and Portugal, of the 13th February 1668, of the 6th February 1715, and of the 12th February 1761, and that of the 11th April 1713, between France and Portugal with the Guaranties of Great Britain, serve as a Basis and Foundation to the peace, and to the present Treaty; and for this purpose, they are all renewed and confirmed in the best form, as well as all the Treaties in general, which subsisted between the High Contracting Parties before the War, as if they were inserted here word for word, so that they are to be exactly observed, for the future, in their whole tenor, and religiously executed on all sides, in all their points which shall not be derogated from by the present Treaty, notwithstanding all that may have been stipulated to the contrary by any of the High Contracting Parties: and all the said parties declare, that they will not suffer any privilege, favour, or indulgence, to subsist, contrary to the Treaties above confirmed, except what shall have been agreed and stipulated by the present Treaty. * * *

Article V.

The Subjects of France shall have the Liberty of fishing and drying, on a part of the coasts of the island of Newfoundland, such as it is specified in theXIIth Article of the Treaty of Utrecht;

which Article is renewed and confirmed by the present Treaty (except what relates to the island of Cape Breton, as well as to the other islands and coasts in the Mouth and in the Gulf of St. Laurence:) And His Britannic Majesty consents to leave to the Subjects of the Most Christian King the Liberty of fishing in the Gulf on condition that the Subjects of France do not exercise the said fishery, but at the distance of Three Leagues from all the coasts belonging to Great Britain, as well those of the Continent, as those of the islands situated in the said Gulf of St. Laurence. And as to what relates to the fishery on the coasts of the Island of Cape Breton out of the said Gulf, the Subjects of the Most Christian King shall not be permited to exercise the said fishery, but at the distance of Fifteen Leagues from the coasts of the Island of Cape Breton; and the fishery on the Coasts of Nova Scotia or Acadia and every where else out of the said Gulf, shall remain on the Foot of former Treaties."

6. DEFINITIVE TREATY OF PEACE AND FRIENDSHIP BETWEEN BRITAIN AND FRANCE, AT VERSAILLES, THE 3rd OF SEPTEMBER, 1783

(Journal of the House of Commons, Volume 39, pages 718-725)

"In the Name of the Most Holy and Undivided Trinity, Father, Son, and Holy Ghost. So be it.

Be it known to all those whom it shall or may in any manner concern. The Most Serene and

Most Potent Prince George the Third, by the Grace of God, King of Great Britain, France, and Ireland, Duke of Brunswick and Lunenburgh, Arch-Treasurer and Elector of the Holy Roman Empire, and the most Serene and Most Potent Prince Lewis the Sixteenth, by the Grace of God, Most Christian King, being equally desirous to put an end to the war, which for several years past afflicted their respective Dominions, accepted the offer, which their Majesties the Emperor of the Romans, and the Empress of all the Russias, made to them, if their interposition, and of their mediation; But their Britanic and Most Christian Majesties, animated with a mutual desire of accelerating the re-establishment of peace, communicated to each other their laudable intention; which Heaven so far blessed, that they proceeded to lay the foundations of peace, the 20th of January in the present year. * * * Who, after having exchanged their respective full powers, have agreed upon the following articles.

Article I.

There shall be a Christian, universal, and perpetual peace, as well by sea, as by land, and a sincere and constant friendship shall be re-established between their Britannic and Most Christian Majesties.

Article 2.

The Treaties of West Phalia of 1648, the Treaties of peace of Nimeguen of 1678, and 1679; of Ryswick of 1697, those of Peace and of Commerce of Utrecht of 1713; that of Baden of 1714;

that of the Triple Alliance of the Hague of 1717; that of the Quadruple Alliance of London of 1718; the Treaty of Peace of Vienna of 1738; the Definitive Treaty of Aix-la-Chapelle of 1748; and that of Paris of 1763, serve as a basis and foundation to the peace, and to the present Treaty, and for this purpose, they are all renewed and confirmed in the best form, as well as all the Treaties in general which subsisted between the High Contracting Parties before the war, as if they were herein inserted word for word; so that they are to be exactly observed for the future in their full tenor, and religiously executed by both parties, in all the points which shall not be derogated from by the present Treaty of Peace.

Article 5.

His Majesty the Most Christian King, in order to prevent the quarrels which have hitherto arisen between the two nations of England and France, consents to renounce the right of fishing, which belongs to him in virtue of the aforesaid article of the Treaty of Utrecht, from Cape Bonavista to Cape St. John, situated on the Eastern coast of Newfoundland, in fifty degrees north latitude; and His Majesty the King of Great Britain consents, on his part, that the fishery assigned to the subjects of His Most Christian Majesty, beginning at the said Cape St. John, passing to the north and descending by the western coast of the island of Newfoundland, shall extend to the place called Cape Raye, situated in forty seven degrees, fifty minutes, latitude. The French fishermen shall enjoy the fishery which is assigned

to them by the present article, as they had the right to enjoy that which was assigned to them by the Treaty of Utrecht.

Article 6.

With regard to the fishery in the Gulf of St. Laurence, the French shall continue to exercise it conformably to the fifth article of the Treaty of Paris."

7. TREATY OF MADRID — CONVENTION BETWEEN BRITAIN AND SPAIN SIGNED AT THE ESCURIAL, 28th OF OCTOBER, 1790

In this Treaty Great Britain and Spain respectively recognize the sovereignty of the other nation over lands and waters lying within 10 leagues seaward of their possessions in North and South America. Excerpts from this Treaty appear, supra, in Part C of this Appendix.

It will be noted that in all of the above-named Treaties dealing with territorial waters on the North American Continent the boundaries of the various colonies on this Continent were fixed at not less than three-leagues from coast and in most instances from ten to forty leagues from coast.

G. INTERNATIONAL LAW RELATING TO SUBMERGED LANDS AND TERRITORIAL WATERS — THE 18th AND 19th CENTURIES

In the case of *The Paquete Habana*, 175 U.S. 677 700, 44 L.Ed. 320, 329, this Court stated that where there is no treaty and no controlling executive legislative act or judicial decision, international law is determined by the customs and usages of civilized nations, and, as evidence of these, to the works of jurists and commenators who by years of labor, research and experiences have made themselves peculiarly well acquainted with the subjects of which they treat, citing:

> *Hilton v. Guyot*, 159 U.S. 113, 163, 164, 214, 215, 40 L.Ed. 95, 108, 125, 126, 16 S.Ct. 139, and *Wheaton On International Law*, 8th Edition, Section 15, 1 *Kent Com.* 18.

The statements of the following authorities on international law relative to submerged lands and territorial waters were made by recognized authorities during the later one-half of the 18th Century and the first half of the 19th Century. They therefore reflect the status of international law as of the date when Louisiana was admitted into the Union in 1812.

The most celebrated book on international law during the second one-half of the 18th Century was Emmerich de Vattel's "Le Droit des Gens (London 1758)." Riesenfeld in his book "Protection of Coastal Fisheries Under International Law", page 22, states

that three copies of Vattel's book were sent to America during the early days of the American Revolution and "It became the standard authority of international law toward the end of the Century. Its tremendous influence warrants a rather extensive quotation." Vattel makes the following statements with regard to territorial waters and fishing rights (Professor Fenwick's translation, Volume III, page 107, 108):

> "The various uses to which the sea near the coasts can be put, render it a natural object of ownership. Fish, shells, pearls, amber, etc., may be obtained from it. Now, with respect to all these things, the resources of coast seas are not inexhaustible, so that the Nation to which the shore belongs may claim for itself an advantage thus within its reach and may make use of it, just as it has taken possession of the lands which its people inhabit. Who can doubt that the pearl fisheries of Bahrein and Ceylon may be lawful objects of ownership? * * *
>
> It is not easy to determine just what extent of its marginal waters a Nation may bring within its jurisdiction . . . But between Nation and Nation the most reasonable rule that can be laid down is that in general the sovereignty of a State over its marginal waters extends as far as is necessary for its safety and as far as it can be effectively maintained; because on the one hand a Nation may appropriate only so much of common property, like the sea, as it has need for some lawful end, and, on the other hand, it would be an idle and ridiculous pretension to claim a right which a Nation would have no means of enforcing . . ."

Georg Friedrich von Martens in 1789 published in French "Precis du Droit des Gens Moderne de' Europe, which work was translated into English by William Cobbett in 1795 under the title of "Summary of the Law of Nations." Riesenfeld states on page 26 of his work referred to above that "as the writer stated in the second edition his work was subscribed to by all members of Congress." The Cobbett translation of Martens' work, page 160 makes the following statement:

> "A custom, generally acknowledged, extends the authority of the possessor of the coast to a cannon shot from the shore; that is to say, three leagues from the shore, and this distance is the least, that a nation ought now to claim, as the extent of its dominions on the seas."

Martens stated that "a nation may occupy and extend its dominions, beyond the distance maintained in the last section . . . and such dominion may, if national security requires it, be maintained by fleet of armed vessels." Later, on page 165, he makes the statement that the exclusive right of the coastal state to all sea products is recognized "within the distance of three leagues."

A German Edition of Von Martens published in 1796 at page 46 states:

> "Pfeffel in Principes du droit naturel, bk. 3, chap. IV, sec. 15, indicates the distance of three leagues as the now universal principle. This prin-

ciple is now incorporated in many treaties, even though no cannon reaches that far, especially over the sea."

Martens, "Precis du droit des gens moderne de l'Europe", (2d ed., Paris, 1801), pp. 71-2, makes this statement:

> "Today all nations of Europe agree that, as a rule, the straits, gulfs and the marginal sea belong to it (the coastal state), at least as far as a cannon, placed on the shore, would carry. In a number of treaties the more extended principle of three leagues has even been adopted."

Riesenfeld makes the further comment regarding Von Martens on page 29 of his work:

> "It is probably no exaggeration to state that G. F. von Martens gave the theory of international law a new direction. He was the great model of all continental writers in the century which followed the appearance of the first French and German editions of his work. Rivier calls him in his well-known Esquisse d'une histoire litteraire des systemes et methodes du droit des gens depuis Grotius jusqu'a nos jours, the true originator of the systematic and scientific study of the positive law of nations.
>
> Of the writers who succeeded him only a few warrant such high praise. Many of them have fallen into a deserved oblivion." * * *

The following is taken from Joseph M. G. de Rayneval's "Institutions du droit de la nature et des gens" (Paris 1803):

> "The sea which washes the shores of a state

is deemed to form a part thereof; its safety and tranquility render this property necessary; the sea must play the part of a bulwark. We could add that the bottom of the sea along the coasts can be considered as having formed a part of the continent and is therefore still considered as forming such part.

But the extent of this property is not determined by a uniform rule. Some fix it at thirty leagues, others only at three; others again fix it at the range of a cannon placed upon the shore. Along the southern coasts of France the distance was ten leagues with regard to the moors."

In the 3rd Edition of Rayneval's works, edited by his son in 1832, we read (page 300):

"But the extent of this property is not determined by a uniform rule: some fix it at a hundred miles, others at sixty, and still others at three."

The following is taken from Riesenfeld's "Protection of Coastal Fisheries Under International Law," page 33:

"8. In his Das Europaische Volker-Recht (Berlin, 1817, pp 140-1) Theodor A. Schumalz distinguished between the territorial sea in Europe and in the colonies, his theory being quite similar to that of B. S. Nau. While in the colonies large belts of the ocean were claimed, in Europe the practice was to the effect that the sea could be appropriated only within a cannon's range, a

distance which arbitrarily, as he said, had been fixed at three leagues (lieues). One may note his reference to leagues instead of miles.

9. Julius Schmelzing, Systematischer Grundriss des praktischen Europaischen Volker-Rechtes (Rudolstadt, 1818) adopted Schmalz's statement almost verbatim (vol. 2, p. 13). In addition he cited Pfeffel who also had been von Martens' authority for the adoption of the three-league limit.

10. The celebrated Johann L. Kluber accepted the cannon-shot rule as the measure for the territorial sea in his Droit des gens moderne de l'Europe (Stuttgart, 1819, p. 200), but he noted that in many treaties—as for instance the Treaty of Paris (1763)—three leagues were accorded."

James Kent wrote his "Commentaries on American Law" in 1896 and on page 29 of this work he states:

> "It is difficult to draw any precise or determinate conclusion, amidst the variety of opinion, as to the distance to which a state may lawfully extend its exclusive dominion over the sea adjoining its territories, and beyond those portions of the sea which are embraced by harbours, gulfs, bays and estuaries, and over which its jurisdiction unquestionably extends."

He then went on to state that "all that can reasonably be asserted is that the dominion of the sovereign of the shore over the contiguous sea extends as far as is requisite for his safety, and for some lawful end."

G. Masse in 1844 published his "Le Droit Commercial Dans ses Rapports Avec le Droit des Gens" (Paris, 1844, Vol. 1, pp 114-15) and recommended the three-mile rule as the limit of the territorial sea, but he concluded (Vol. I, p. 14 and 15):

> "However, in practice this logical rule is not followed. Each people determines a certain distance in the ocean within which it exercises its authority and which constitutes the territorial sea for all who admit this determination. For the French coasts this distance amounts to two myriameters or five leagues in virtue of a customs law of the fourth of Germinal of the Year 11 (since the French revolution). Vessels that enter within such a radius and the merchandise they carry immediately become subject to French customs law. A great number of treaties fix this distance at 3 leagues."

In his "Draft Outlines of an International Code," published at New York in 1872, David Dudley Field adopted the view that territorial waters extended as far as three marine leagues (§ 28). The same rule was stated in the second edition of his Code (New York, 1876, §28).

In the latter one-half of the 19th Century William E. Hall published his celebrated "International Law" (Oxford 1880). On page 126 he makes the following statement with respect to marginal waters:

> "Generally their limit is fixed at a marine league from the shore; but this distance was defined by the supposed range of a gun of position,

and the effect of the recent increase in the power of artillery has not yet been taken into consideration, either as supplying a new measure of the space over which control may be efficiently exercised, or as enlarging that within which acts of violence may be dangerous to persons and property on shore. It may be doubted, in view of the very diverse opinions which have been held until lately as to the extent to which marginal seas may be appropriated, of the lateness of the time at which much more extensive claims have been fully abandoned, and of the absence of cases in which the breadth of territorial water has come into international question, whether the three-mile limit has ever been unequivocally settled; but in any case, as it has been determined, if determined at all, upon an assumption which has ceased to hold good, it would be pedantry to adhere to the rule in its present form; and it is probably safe to say that a state has the right to extend its territorial waters from time to time at its will with the increased range of guns."

The following position was taken by the American writer Edwin F. Glenn in his "Handbook of International Law" (St. Paul, 1895):

"The jurisdiction of a state over its marginal waters extends from the shore to such distance as the power of the state is effective, the generally accepted distance, being a marine league (3½ English miles), is determined by the effective range of cannon . . . At the present time, however, the effective range of cannon has been very much increased, and modern guns are effective

for at least double this distance; and there can be little, if any, doubt as to the absolute right of a state to extend its territorial waters to correspond with this increased range (p. 59)."

Although the United States and Britain both have in the latter part of the 19th Century asserted a three-mile limit to territorial waters on certain coasts and in certain seas, and a number of writers during this period have declared the three-mile limit to be a rule of international law, *the three-mile seaward boundary is not a generally accepted limit in international law, and certainly was not accepted as a rule in 1812, or earlier years.* As shown in prior sections of this Appendix this limit has been accepted by the United States only on its Atlantic and Pacific Coasts but not in the Gulf of Mexico. *In the past decade this so called three-mile limit has been discarded entirely for a more extensive boundary which includes the entire Continental Shelf.*

The so-called three-mile rule was generally repudiated at the Hague Codification conference of 1930. In 1934 Gilbert Gidel published in Paris his celebrated treatise "Le Droit International Public de la Mer." In this work he gave a very comprehensive treatment to the entire question regarding the extent of the territorial seas. In volume III, page 151, he says:

"The alleged three-mile rule was the chief victim of the Conference (i. e. the Hague Codification Conference of 1930). Since then it is im-

possible to speak of the three-mile rule as constituting a rule of general positive international law. It can only be a rule governing internal affairs, for a certain number of states which have adopted it for the purpose of regulating a certain number of interests; the three-mile rule, as a rule of international law, can be no more than a conventional rule, applicable in the relations between the states which have bound themselves expressly to observe it. The three-mile rule exists only as a minimum rule with respect to the extent of the territorial sea. It is not a rule of international law without qualification . . ."

H. JURISDICTION EXERCISED BY LOUISIANA OVER WATERS AND THE BED OF THE GULF OF MEXICO

1. LEGISLATIVE ACTS RELATING TO FISHERIES AND OYSTERS

Act 18 of 1870

"AN ACT

"To regulate the Oyster Fisheries on the bays and coasts of the State of Louisiana.

"In order to preserve the oyster reefs on the bays and coasts of the State of Louisiana from wanton spoilation and ultimate destruction, and to secure to the people of this State the permanent enjoyment of one of the great luxuries of life and to perpetuate and protect a species of property that has hitherto been, and may still be, a great source of revenue to the State of Louisiana—

"Section 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened, That the season for fishing oysters on the reefs, bays and coasts of the State of Louisiana shall commence on the fifteenth day of September and end on the first day of April, and during the aforesaid period, all citizens of the United States, or at least those who have declared their intention of becoming such, are hereby permitted, without any restriction whatever or any payment of taxes and dues to the State of Louisiana, for the privilege to fish, bed and remove oysters for their own use and benefit, or for sale or any other purpose, on any of the reefs, bays and coasts of the State of Louisiana.

* * * *

"Sec. 4. Be it further enacted, etc., That none but citizens of the United States, or at least those who have declared their intention of becoming such, shall fish, bed or remove oysters on any of the reefs, bays and coasts of the State of Louisiana, under a penalty of not less than fifty nor more than one hundred dollars, recoverable in any court having competent jurisdiction, one-half to the informer and the remainder to the school fund of the parish in which the offense is committed."

Act 106 of 1886

"AN ACT

"To encourage, protect, regulate and develop the industry in the State of Louisiana, and imposing penalties for the violation of the provisions of this act.

"Section 1. Be it enacted by the General Assembly of the State of Louisiana, That all the beds of the rivers, bayous, creeks, lakes, coves, inlets and sea marshes bordering on the Gulf of Mexico, and all that part of the Gulf of Mexico within the jurisdiction of this State, and not heretofore sold or conveyed by special grants or by sale by this State, or by the United States to any private party or parties, shall continue and remain the property of the State of Louisiana, and may be used as a common by all the people of the State for the purpose of fishing and of taking and catching oysters and other shell fish, subject to the reservations and restrictions hereinafter imposed, and no grant or sale, or conveyance shall hereafter be made by the Register of the State Land office to any estate, or interest of the State in any natural oyster bed or shoal, whether the said bed or shoal shall ebb bare or not.

* * * *

"Sec. 4. Be it further enacted, etc., That the police jury of any parish, in which natural osyter beds are formed and in which there are water beds and water ways suitable for oyster planting and cultiva-

tion, are hereby empowered to make all needful rules and regulations, and pass all ordinances, not otherwise provided for in this act, necessary to carry into effect the provisions of this act in their respective parishes.

* * * *

"Sec. 6. Be it further enacted, etc., That any person, being a resident of this State, who shall be desirous of catching or taking oysters with ordinary oyster tongs or otherwise, for sale, shall apply to the tax collector of said parish, or one of his deputies for the parish in which he resides, for registration. * * *

* * * *

"Sec. 8. Be it further enacted, etc., That hereafter it shall not be lawful for any person to take or catch oysters in the waters of this State with tongs or in any other way from the 30th day of April to the 15th day of August; * * *

* * * *

"Sec. 10. Be it further enacted, etc., When any difficulty may arise in the execution of this law, it shall be the duty of each collector to give information of any violation thereof known to him or which may be brought to his notice, to the district attorney for the district in which any offense may have been committed, * * * All owners and masters of canoes, boats or vessels, registered or licensed under the provisions of this act, are hereby constituted officers of this State, for the purpose of arresting and taking before a justice of the peace, who shall have jurisdiction thereof, any person or persons who may be engaged in violat-

ing any of the provisions of this act, and of seizing any canoes, boat or vessel engaged therein; and all such owners or masters are hereby vested with power to summon the posse comitatus to aid in making such arrest and seizure as fully as are constables and sheriffs of the several parishes of the State. * * *

* * * *

"Sec. 11. Be it further enacted, etc., That all that part of the State of Louisiana adapted to the oyster industry shall be divided as follows: All such part of the State lying east of the Mississippi river shall be known as the first oyster district of the State of Louisiana; and all such parts of the State lying between the Mississippi river and the Atchafalaya river, shall be known as the second oyster district of Louisiana; and all such parts of the State lying west of the Atchafalaya river shall be known as the third oyster district of Louisiana; and the Governor shall, when this can be done without any expense to the State other than what shall be known as the Oyster Fund in the State Treasury, by and with the advice and consent of the Senate, appoint three State commissioners, to be known as the 'Oyster Commissioners,' one from each oyster district, as provided for in this act. * * *"

Act 110 of 1892

"AN ACT

"To encourage, protect, regulate and develop the oyster industry of the State of Louisiana; to define the rights of riparian proprietors in oyster beds and fisheries on their water front; to provide for

the leasing of oyster lands belonging to the State; to provide for the taxation of oyster grounds and their produce, and the capital invested in oyster fisheries; for the licensing, registration and designation of vessels engaged therein; to provide for the punishment of persons depredating on oyster grounds; establishing a close season for the fishing of oysters grown in this State; to authorize the police juries of the several parishes in which oyster lands are situated; to pass ordinances to carry out the provisions of this act; to provide for the appointment of an oyster inspector for each of said parishes; to define his duties and powers and fixing his salary; and imposing penalties for violations of this act.

"Section 1. Be it enacted by the General Assembly of the State of Louisiana, That all the beds of the rivers, bayous, creeks, lakes, coves, and inlets, bordering on the Gulf of Mexico, and all that part of the Gulf of Mexico within the jurisdiction of this State; shall continue and remain the property of the State of Louisiana, and may be used as common by all citizens of the State for the purposes of fishing and taking and catching oysters and other shell fish subject to the reservations and restrictions hereinafter imposed and no grant or sale or conveyance shall hereafter be made by the Register of the State Land Office to any estate, or interest of the State, in any natural oyster bed or shoal, whether the said bed or shoal shall ebb bare or not; and the citizens, of this State shall

have the exclusive privilege to fish or take oysters in any natural oyster bed or shoal subject to the restrictions hereinafter imposed.

* * * *

"Sec. 4. Be it further enacted, etc., That any person or persons desiring to locate places for the bedding and planting of oysters upon the water front of any lands owned by the State shall make application to the police jury of the parish in which said lands are situated, stating the number of acres, the description of the place and where situated, accompanied by a map or sketch and process verbal of survey by the parish surveyors, showing metes and bounds, * * *

"Sec. 5. Be it further enacted, etc., That any person, being a citizen of this State, who shall be desirous of catching or taking oysters with ordinary tongs, or otherwise, for sale, shall apply to the tax collector of said parish, or one of his deputies, for the parish in which he resides, for registration. * * *

* * * *

"Sec. 9. Be it further enacted, etc., That when any difficulty may arise in the execution of this law it shall be the duty of each collector to give information of any violation thereon known to him, or which may be brought to his notice, to the district attorney for the district in which any offense may have been committed, and the collector shall be guided by the instruction of said district attorney in the mode or proceeding and the remedy provided, and it shall be the duty of said attorney to institute the proper pro-

:eedings accordingly and prosecute the same, as provided by this act and the revenue laws of this State. The penalties herein prescribed not otherwise provided for shall be recoverable by presentment, indictment or information in the district court having jurisdiction thereof. All owners and masters of canoes, boats or vessels registered or licensed under the provisions of this act are hereby constituted officers of this State for the purpose of arresting and taking before a justice of the peace, who shall have jurisdiction thereof as a committing magistrate, any person or persons who may be engaged in violating any of the provisions of this act, * * *

* * * *

"Sec. 14. Be it further enacted, etc., That it shall be the duty of the police juries in the various parishes in which oyster lands may be situated, at their first regular meeting after the passage of this act, or as soon thereafter as practicable, to elect an officer for their parish, who shall hold his office during the pleasure of the police jury, to be known as the oyster inspector of said parish, * * * "

Act 121 of 1896

"AN ACT

"To encourage, protect, regulate and develop the oyster industry of the State of Louisiana; to define the rights of riparian proprietors in oyster beds and fisheries on their water front; to provide for the leasing of oyster lands belonging to the State; to provide for the licensing, registration, and de-

signation of vessels engaged therein; to provide for the punishment of persons depredating on oyster grounds, establishing a close season for the fishing of oysters grown in this State; to authorize the police juries of the several parishes in which oyster lands are situated, to pass ordinances to carry out the provisions of this act; to provide for the appointment of an oyster inspector for each of said parishes; to define his duties and powers and fix his salary, to impose penalties for violations of this act; to repeal Act No. 106 of 1886, approved July 8, 1886; an act, No. 110 of 1892, approved July 7, 1892, and all acts or parts of acts in conflict with the provisions of this act.

* * * *

"Sec. 4. Be it further enacted, etc., That any person or persons desiring to locate places for the bedding and planting of oysters upon the water front of any lands owned by the State shall make application to the police jury of the parish in which said lands are situated, stating the number of acres, the description of the place and where situated, accompanied by a map or sketch and proces verbal of survey by the parish Surveyor showing metes and bounds, * * * If any citizen of this State shall be concerned or interested with any person not a citizen of the State in taking, catching, or planting oysters within this State, or shall knowingly permit any person not a citizen of this State to take, catch or plant oysters in his name, he shall be liable to a fine of five hundred ($500.00) dollars, and the vessels or craft so employ-

ed in catching or planting, shall be forfeited. If any person other than a citizen of this State shall take or catch oysters or other shell fish in any manner, or plant oysters in the waters thereof, he shall forfeit five hundred ($500.00) dollars and the vessel, tackle and appurtenances, and any person not a citizen shall be deemed to have violated this section who shall allow oysters purchased by him for sale and laid out as purchased until he has purchased his cargo, to remain so laid down, more than sixty (60) days; provided that no person shall be allowed to lease more than ten (10) acres of State lands suitable for bedding planting or cultivating oysters; the lease herein provided for shall not be assignable or liable to seizure.

"Sec. 5 (Identical to Sec. 5 of act 110 of 1892)

* * * *

"Sec. 7. Be it further enacted, etc., That hereafter it shall not be lawful for any person to take or catch oysters in the waters of this State, with tongs or in any other way, from the first day of May to the first day of September of each year; * * *

* * * *

"Sec. 9. (Similar to sec. 9 of act 110 of 1892)

* * * *

"Sec. 14 (Identical to Sec. 14 of act 110 of 1892)

* * *

Act 153 of 1902

"AN ACT

To encourage, protect, regulate and develop the oyster industry of the State of Louisiana; to constitute

the bottoms or beds of the bodies or streams of water along the coast of the Gulf of Mexico within the jurisdiction of the State of Louisiana, a common for the taking of oysters or other shell fish by residents of this State, under certain conditions; to define the rights of riparian proprietors in oyster beds on the water front; to create the Oyster Commission of Louisiana, to determine the qualifications and manner of selection of the members of said Commission and to define its powers and duties; * * * to vest said Commission with the power to control and require said Commission to provide rules and regulations governing the oyster producing beds and the waters of this State and the oyster industry of this State and to empower said Commission to enforce its rules and regulations by fine or imprisonment; to provide for the leasing of oyster lands belonging to the State; * * *

Sec. 1. Be it enacted by the General Assembly of the State of Louisiana, That all of the beds of the rivers, bayous, creeks, lagoons, lakes, bays, coves, sounds and inlets bordering on or connecting with the Gulf of Mexico, and all that part of the Gulf of Mexico within the juridiction of the State of Louisiana shall be, continue, and remain the property of the State of Louisiana; and may be used as a common by all the residents of the State of Louisiana and Louisiana corporations for the purposes of fishing, taking, catching, bedding and raising oysters and other shell fish, subject to the reservations and restrictions, hereinafter to be imposed by this Act and by the Oys-

ter Commission of Louisiana hereinafter created. No grant, sale or conveyance of the lands forming the bottoms or beds of any of said bodies or streams of water, except the conditional leases and dispositions hereinafter provided for, shall hereafter be made by the Register of the State Land Office or by any other official, corporation or person. Nor shall any natural oyster bed or reef, whether same shall ebb bare or not, ever be sold by the State, or by any official, or by any political corporation or subdivision of said State. * * *

Sec. 2. Be it further enacted, etc., That * * * * all leases of bedding grounds made in pursuance of the provisions of Act 110 of 1892, or Act 121 of 1896 shall continue in force and effect up to their expiration without any renewal rights except those conferred by this act, provided such lessees shall, within a period of one hundred and twenty days from the promulgation of this act, file with the Oyster Commission, hereinafter provided for, a copy of their lease and a plan of survey of their leased bedding grounds, pay to the said Commission the rental provided for by this act and subject themselves to such further regulations as said Commission may impose. * * * * *

Sec. 3. Be it further enacted, etc., That the Governor shall appoint, by and with the advice and consent of the Senate, five (5) competent persons from among the qualified voters of the State which said five (5) persons, as commissioners, shall form and constitute the "Oyster Commission of Louisiana," which said Commission is hereby created. * * * * *

Sec. 6. Be it further enacted, etc., That * * * * Said Commission shall elect a Civil Engineer and Surveyor whose compensation shall be fixed by the Commission and whose services, when employed for the surveying and staking out of private bedding grounds, shall be paid by the parties applying for such surveys, at a rate of compensation to be fixed by the Commission. Such Engineer and Surveyor may, by and with the advice and consent of the Commission, appoint the parish Surveyors his deputies. Said Commission shall have authority to employ such Deputy Inspectors, patrolmen and other employees, at salaries to be fixed by said Commission, as may be necessary, to regulate the oyster industry and carry into effect the provisions of this act and the rules and regulations of the Commission. * * * * *

Sec. 8. Be it further enacted, etc., That the said Commission shall acquire such boats, vessels and other property as may be necessary to regulate and control the oyster industry, and as soon as the funds become available for the purpose, said Commission shall establish and maintain, by means of armed vessels, the necessary patrol of the Gulf Coast waters to enforce the police regulations of said Commission, with authority to use such arms as may be necessary to capture any vessel violating the provisions of this act or the rules and regulations of said Commission. * * *

Sec. 10. Be it further enacted, etc., That any person, firm or corporation a bona fide resident of this State desiring to lease a part of the bottom or

beds of any of the waters of this State for oyster bedding or cultivating purposes shall present to the Commission a written application setting forth the name and address of the applicant, the location and amount of bedding or planting ground desired and a plan of survey of said bedding or planting grounds made by the Commission's Surveyor, or one of his Deputies * * *

Sec. 16. Be it further enacted, etc., That for the purpose of carrying into effect the provisions of this act and the rules and regulations of the Oyster Commission, commissioners, inspectors, employees of the Oyster Commission, captains and members of the crew, of all vessels engaged in the oyster industry are hereby constituted peace officers with power to arrest on view without warrant any one violating the provisions of the law or the rules and regulations of the Commission; and it shall be the duty of such captains or crews to lend their assistance, and the assistance of their vessels, to any inspector of the Commission in making arrests. * * *"

Act 52 of 1904

"AN ACT

To encourage, protect, regulate and develop the oyster industry of the State of Louisiana, and to increase the revenues of the State therefrom; by recognizing and declaring the ownership of the State in and to the bottom or beds of the bodies or streams of water along the Coast of the Gulf of Mexico, and the waters of the Gulf of Mexico within the jurisdiction of the State

of Louisiana; by prohibiting their alienation in fee simple; by recognizing and declaring the ownership of the State in and to all oysters growing natural thereon; by limiting the rights of riparian proprietors to low water mark; by creating the Oyster Commission of Louisiana, providing for its organization and defining its powers and duties; by constituting said Commission a department of the State government and a political corporation invested with all necessary corporate powers; by providing for the leasing of oyster lands belonging to the State; by providing for the licensing, registration and designation of vessels employed in the oyster industry; * * *

Sec. 1. Be it enacted by the General Assembly of the State of Louisiana, That all the beds and bottoms of the rivers, bayous, lagoons, lakes, bays, sounds and inlets bordering on or connecting with the Gulf of Mexico, and all that part of the Gulf of Mexico within the jurisdiction of the State of Louisiana, and all oysters and other shell fish naturally growing thereon shall be, continue and remain the property of the State of Louisiana, and shall be under the control of the Osyter Commission of Louisiana, hereinafter created, which said Commission may permit of its use by residents of the State of Louisiana, firms composed of residents of Louisiana, and Louisiana corporations, for the purpose of fishing, taking, catching, bedding and raising oysters and other shell fish, subject to the reservations and restrictions herein-

after to be imposed by this act, or hereafter to be imposed by said Oyster Commission of Louisiana. No grant, sale or conveyance of the lands forming the bottoms or beds of said bodies or streams of water, except the conditional leases and dispositions hereinafter provided for, shall hereafter be made by the Register of the State Land Office, or by any other official, political corporation or person. * * *

Sec. 3. Be it further enacted, etc., That the Governor shall appoint, by and with the advice and consent of the Senate, five competent persons from among the qualified voters of this State, which said five (5) persons, as commissioners, shall form and constitute the "Oyster Commission of Louisiana," which said Commission is hereby created. * * Said Commission shall be and is hereby vested with full and complete power and authority on behalf of the State of Louisiana, to control the oyster producing territory of, and the oyster industry carried on in this State, except to such extent as its powers and discretion shall be limited by the provisions of this Act, and subsequent amendments of this Act by the State Legislature; and to enforce such rules and regulations as it may adopt, * * *

Sec. 4. Be it further enacted, etc., That the said Commission shall, in addition to the powers herein conferred, be constituted as a Department of the State Government for the purpose of management of the State's oyster fields and water bottoms * * *

Sec. 6. Be it further enacted, etc., that * * * said Commission may elect a Civil Engineer and Surveyor, to be known as the Chief Surveyor, whose compensation to be fixed by the Commissioners annually shall not exceed two thousand five hundred dollars ($2,500) per annum, and whose service shall be devoted exclusively to the work of the Commission. The Commissioners shall appoint such deputy surveyors as may be necessary, which said deputies shall survey the bedding grounds of applicants, and shall receive for such service, such compensation, payable by the applicant, as the Commission may determine. Said Commission shall have authority to employ such Deputy Inspectors, Collectors, Patrolmen and other employees, at salaries to be fixed by said Commission, as may be necessary to regulate the oyster industry and carry into effect the provisions of this act and the rules and regulations of the Commission. * * *

Sec. 8. Be it further enacted etc., That the said Commission shall acquire such boats, vessels and other property as may be necessary to regulate and control the oyster industry, and as soon as the funds become available for the purpose, said Commission shall establish and maintain, by means of armed vessels, the necessary patrol of the Gulf Coast with authority to use such arms as may be necessary to capture any vessel or person violating the provisions of this act, or the rules and regulations of said Commission. All the property now owned by the Oyster

Commission of Louisiana organized under Act 153 of 1902, shall revert to and become the property of the Oyster Commission of Louisiana, organized under the provisions of this act. * * *

Sec. 10. Be it further enacted, etc., That the said Commission shall have power to lease any water bottoms in the State of Louisiana, as described in Section 1 of this act, and desirable for purposes of bedding, planting and cultivating or propagating oysters. No natural oyster reefs shall be leased. These leases can only be made to citizens of Louisiana, Louisiana firms, composed of citizens of Louisiana and Louisiana corporations domiciled in this State. * * *

Sec. 14. Be it further enacted, etc. * * *

The water bottom around the Biological Station, situated in the Parish of Cameron, near the mouth of the Calcasieu River, shall be reserved for experimental purposes to the following extent, to-wit: To a distance of a quarter of a mile above said station to the full extent of the river, and down the river to the Gulf to the full extent of said river, and to a distance of one mile East and West of the mouth of the river, and extending to the full limit in the Gulf. * * * "

Act 144 of 1908

AN ACT

"To establish a Commission for the Conservation of Natural Resources; to provide for its administration and duties; and repealing all laws in conflict or inconsistent with its provisions.

Whereas, the recent Conference of Governors, in the White House declared their firm conviction that the conservation of natural resources is a subject of transcendant importance; that these resources include the waters, the forests, the land, and minerals; that the nation, the State and the people should co-operate in conservation, and,

Whereas, the Conference declared that this co-operation should find expression in suitable action by the Congress within the limits of, and co-extensive with, the national jurisdiction of the subject, and, complementary thereto, by the legislatures of the several States within the limits of and co-extensive with, their jurisdiction, and,

Whereas, the Conference recommended the appointment by each State of a Commission on the Conservation of Natural Resources, to co-operate with each other and with any similar commission of the Federal government, therefore,

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That a board of commissioners to be known as the "Commission on Natural Resources" is hereby created, to be composed

of seven members, two of whom shall be ex-officio the Professor of Horticulture of the State University, and the Chief Engineer of the State Board of Engineers; the other five to be appointed by the Governor, who shall designate from among the members of president and a secretary. * * *

Section 2. Be it further enacted, etc., That it shall be the duty of the Commission provided for in Section 1 of this Act to inquire into and report on the forest conditions of the State of Louisiana, with reference to the preservation, the reforesting, of denuded lands, the effect of the destruction of forests on climatic conditions and waterways, and their control; the drainage and reclamation of swamp lands; and the prevention of waste in the extraction of oil, gas and other minerals, and generally on all matters pertinent to these subjects; to report to the General Assembly in 1910 the result of such investigations, to advise what legislation for the conservation of natural resources may be advisable, and perform such other duties as may be incidental thereto."

* * * * *

Act 24 of 1910

AN ACT

"For the protection of fish, by making it a misdeameanor to throw or place dynamite, lyddite, gun powder cartridges, cannon crackers or any other explosive or to throw or place acids, or lime which have not been used in manufacturing or

commercial processes, india berries, saw dust, green walnuts, walnut leaves, or any other deleterious substance in the waters of the State and to provide for the punishment of violations thereof.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, that in order to prevent the killing of fish, it shall be unlawful for any person to throw or place dynamite, lyddite, gun powder cartridges, cannon crackers, or any other explosive or to throw or place acids, or lime which have not been used in manufacturing or commercial processes, india berries, saw dust, green walnuts, walnut leaves, or any other deleterious substance into, or on, or where it will run into, the waters of the bayous, lagoons, ponds, lakes, bays, rivers, sounds, or in the Gulf of Mexico within the territorial jurisdiction of this State."

Act 132 of 1910

AN ACT

"For the protection of fresh and salt water fish; to provide the manner in which said fish may be caught; to fix the seasons in which they may be caught; to authorize the Board of Commissioners for the Protection of Birds, Game and Fish, to issue licenses to fish; to build and conduct fish hatcheries and do all necessary work to conserve the fresh and salt water fish of the State, and to fix penalties for violations thereof.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That all fresh and

salt water fish found in the waters of the State shall be and are hereby declared to be the property of the State." * * *

ACT 172 of 1910

AN ACT

"Making appropriation to defray the expenses of the Conservation Commission and to amend and reenact Act No. 144 of the Session of 1908, approved July 2, 1908, entitled "An Act to establish a Commission for the Conservation of Natural Resources; to provide for its maintenance, administration and duties; and repealing all laws in conflict or inconsistent with its provisions." * * * * *

Act 189 of 1910

AN ACT

"To regulate the oyster industry of the State of Louisiana, by recognizing and declaring the ownership of the State to all water bottoms or beds of streams, bayous, lagoons, lakes, bays, rivers and canals, along the coast of the Gulf of Mexico, and of the Gulf of Mexico, within the jurisdiction of Louisiana by prohibiting their alienation in fee simple; by recognizing and declaring the ownership of the State in and to all oysters growing thereon by limiting the riparian oysters to low water mark; by providing for the leasing of oyster lands of water bottoms belonging to the State; by recognizing leases already made on the same, by providing for the licensing, registering and designation of vessels employed in

the oyster industry; by levying a special assessment or privilege tax on oysters taken from Louisiana waters and a license tax on persons, firms, or corporations, and vessels engaged in the oyster industry; by providing the manner of collecting, handling, depositing and disbursing the revenues derived therefrom; by providing for the protection of natural oyster reefs, and the designation of oyster preserves; by providing the manner of shipping or taking oysters out of the State; and by providing such other rules and regulations necessary to properly carry out the purposes of this Act; by providing penalties and forfeitures for the violations of this Act; and by repealing and superseding all laws or parts of laws in conflict herewith, more especially Act No. 52 as amended by Act 178 of 1906, Act 167 of 1908 and Act 291 of 1908.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That all beds and bottoms of rivers, bayous, lagoons, lakes, bays, sounds, and inlets bordering on or connecting with the Gulf of Mexico, and that part of the Gulf of Mexico within the jurisdiction of the State of Louisiana, including all natural oyster reefs, and all oyster and other shell fish growing thereon shall be, continue and remain the property of the State of Louisiana, except as otherwise provided, and shall be under the exclusive control of the Board of Commissioners for the Protection of Birds, Game and Fish. The Board may permit the use of the said bottoms and reefs for the purpose of fishing, taking, bedding and raising oys-

ters and other shell fish, subject to the restrictions imposed by law, and the regulations of said Board, in so far as they do not conflict with the laws of the State.

* * * * * * *

Section 3. Be it further enacted, etc., That the Board of Commissioners for the Protection of Birds, Game and Fish shall have the power to lease any and all water bottoms and natural reefs as described in Section 1 of this Act. * * *

Section 6. * * * *

No person, firm or corporation, shall lease, hold or control more than one thousand (1,000) acres of said water bottoms, except that when said lessee owns or operates more than one canning plant he or they may be permitted to lease an additional 500 acres of water bottoms and reefs for a second plant, an additional 300 acres for a third plant, an additional 200 acres for a fourth plant * * * *

* * * * * * *

Section 15. Be it further enacted, etc., That it shall be unlawful for any person, firm, or corporation to take or catch oysters on the natural reefs of the State, or to have such oysters in possession except under the rules and regulations of the Board of Commissioners for the Protection of Birds, Game and Fish, and the onus shall be upon the accused to establish that any oysters in his or their possession were taken from leased water bottoms. For the purposes of this Act, all oysters in possession of any person, firm or corporation, in this State shall be deemed to be oysters fished in Louisiana waters.

* * * * *

Section 18. * * * *

No person shall take a cargo or any part of a cargo of oysters in the shell, out of the State on any vessel or water craft, or shall fish, catch or gather a cargo or any part of a cargo of such oysters, with the intent to take them out of this State into any other State for any purpose. * * * *

* * * * * * * *

Section 21. Be it further enacted, etc., That the Board of Commissioners for the Protection of Birds Game and Fish shall acquire such boats, vessels and other property as may be necessary to regulate and supervise the work of the Board, and as soon as the funds become available for the purpose, said Board shall establish and maintain, by means of armed vessels, the necessary patrol of the Gulf Coast with authority to use such arms as may be necessary to capture any vessel, person or persons violating the provisions of this Act.

Section 22. Be it further enacted, etc., That for the purpose of carrying into effect the provisions of this Act, and the rules and regulations of the Board of Commissioners for the Protection of Birds, Game and Fish, Commissioners, inspectors, employees of the Board, captains and members of the crews of all vessels in the service of the Board, are hereby constituted peace officers with the power of arrest on view, without warrant, any one violating the provisions of the law, and it shall be the duty of all cap-

tains and crews to lend their assistance and the assistance of their vessels to any employee of the Board in making arrests."

* * * * * * *

Act 245 of 1910

AN ACT

"For the protection of salt water shrimp; to provide the manner in which said crustaceans may be caught; to fix the season in which they may be caught; to authorize the issuance of license to seine, and to provide penalties for the violations of this Act.

Sec. 1. Be it enacted by the General Assembly of the State of Louisiana, That all salt water shrimp found in the waters of this State shall be and are hereby declared to be the property of the State.

Sec. 2. Be it further enacted, etc., That no person within the State of Louisiana, shall catch or have in possession, living or dead, any salt water shrimp, or part thereof, or purchase, sell, or offer for sale, any such shrimp, or part thereof after same have been caught except as otherwise permitted.

Sec. 3. Be it further enacted, etc., That it shall be unlawful for any person, firm or corporation, to catch salt water shrimp by using a seine or other device which exceeds one hundred and twenty fathoms (120) in length, except as may be provided herein.

* * *

Sec. 7. Be it further enacted, etc., That it shall be unlawful for any person, firm or corporation, res-

ident, domiciled within the State, to set or draw, or attempt to set or draw any seine or other device, of fifty fathoms (50) and upwards in length, in any waters of the State for the purpose of catching salt water shrimp, unless a license fee has been paid thereon at the rate noted herein, and is at all times had in possession to be shown on demand of any warden or officer. Said license to be issued by the Board of Commissioners for the Protection of Birds, Game and Fish, and the process thereof to be turned into the State Treasury, and placed to the credit of said Board. * * * *

Sec. 8. Be it further enacted, etc., That it shall be unlawful for any non-resident, or unnaturalized foreign resident, firm or corporation not domiciled within the State, to set or draw, or attempt to set or draw any seine or other device, in any waters of the State for the purpose of catching salt water shrimp unless a license fee has been paid thereon at the rate noted herein, and is at all times had in possession to be shown on demand of any warden or officer. * * *

On seines over one hundred and seventy-five (175) fathoms in length an additional license of $5.00 for each twenty fathoms." * * *

Act 127 of 1912

AN ACT

"To create and establish a Conservation Commission of Louisiana, defining its duties and powers and constituting it a department of the Government; to provide for the necessary employees and defining their qualifications, duties and powers in relation to the protection of birds, fish, shell fish and wild quadrupeds; forestry and mineral resources of the State; to provide for the payment of the salaries and expenses of the said Commission, to issue licenses and levy and collect the charges thereon, and to provide for the revenues to maintain and support the same; to provide for the establishment of public and private preserves and propagating grounds for game and fish; to authorize the Conservation Commission herein created to discharge the duties and functions heretofore exercised by the Board of Commissioners for the protection of birds, game and fish, and the Conservation Commission heretofore created, and the duties heretofore assigned to the Department of Forestry and the Department of Mining and Minerals; to authorize said commission to represent the aforesaid other commissions either as defendant in any litigation that might be pending; to provide penalties for the violation of this act, and to repeal all laws or parts of laws in conflict with or inconsistent with the provisions of the act.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That the Conservation Commission is hereby created, composed as follows: * * *

Section 2. Be it further enacted, etc., That the Conservation Commission of Louisiana is hereby constituted a department of the State government for the purpose of the protection, management, and conservation of the oyster fields and water bottoms of the State; to protect the birds, fish, shell fish and wild quadrupeds of the State, and the natural and mineral and forestry resources of the State and to see that all laws relative thereto are enforced, and, as such, it is hereby created a body politic or political corporation invested with all powers inherent in such corporation. * * *

Said Commission shall adopt by-laws for its own government and the government of its employees, it shall adopt rules and regulations for comprehensive control of birds, fish, shell fish, and wild quadrupeds, and mineral and soil and natural resources of the State which said by-laws or rules and regulations shall not be inconsistent with or contrary to the provisions of this act. * * *

* * * It shall also protect and propagate, when possible all species of birds, and game of whatever description and establish preserves and hatcheries, to be maintained and operated under the control of the Commission, and it shall be its duty to rigidly en force all laws relative to the bedding, fishing, selling, shipping and canning of oysters and of all laws relative to the protection and propagation and selling of birds and game and of all laws relative to the protection and propagation and sale of all species of fish

in this State whether they shall be salt water or fresh water fish, whether they shall be shell fish or fish of any other description and of all laws relative to diamond-back terrapin, shrimp, and, in fact shall have full power and control over birds and animals, whether they be game or fur-bearing or not; over all fish whether they shall be salt water or fresh water fish; over diamond-back terrapin shrimp and oysters of this State found or being within the borders of this State, or within any of the waters of the State, whether said waters be rivers, lakes, bayous, lagoons, bays or gulfs. It shall, likewise enforce all laws relating to the natural mineral and forestry resources of this State.

* * *

Section 8. Be it further enacted, etc., That the Conservation Commission shall acquire such boats and other property as may be necessary to regulate and supervise the work of said Commission, and as soon as the funds become available for the purpose, the Conservation Commission shall establish suitable armed patrols on the boundary lines between the waters of Louisiana and Mississippi to prohibit the violation of any of the laws of this State relating to birds, shell fish and wild quadrupeds of this State.

Section 9. Be it further enacted, etc., That it shall be the duty of the said Conservation agents to see that every person hunting, trapping, seining, shipping or dealing in any way in any of the natural resources of this State in the territory assigned to each agent for which a license must be obtained as

hereinafter provided has in his possession, or is the owner of any official license as provided by law, except in case of a resident hunting on his own lands or on lands leased for agricultural purposes or on lands inside the ward in which his domicile is located.

* * * * * *

Section 11. Be it further enacted, etc., That the Conservation Commission shall have power to appoint competent men throughout the State to be known as "Special Conservation Agents," who shall possess all rights and powers given by the law to the regular Conservation Agent except the right to search without warrants, and they shall be subject to all requirements and regulations both of the law and the rules of the Conservation Commission, provided that such special Conservation Agent shall be in no way entitled to recompense from either the parish, or State or Commission for services rendered or expenses incurred in the performance of their duty. All sheriffs, constables and Peace Officers shall have the power as Conservation Agent under this Section except the right to search without warrant, and shall receive one-half of all fines collected for violation of the Game and Conservation Laws of this State that may be reported by them."

* * *

Act 168 of 1912

AN ACT

"To amend and re-enact Sections 3, 4, 7, 8, and 9 of Act No 245 of the General Assembly of the

State of Louisiana, approved July 7, 1910, being an Act entitled an Act for the protection of salt water shrimp; to provide the manner in which said crustaceans may be caught; to fix the season in which said crustaceans may be caught; to authorize the issuance of licenses to seine, and to provide penalties for the violation of this Act.

* * *

Sec. 8. Be it further enacted, etc., That it shall be unlawful for any non-resident, firm or foreign corporation or firm or corporation not domiciled within this State, to set or draw, or attempt to set or draw any seine or other device in any waters of the State for the purpose of catching salt water shrimp, unless a license fee has been paid thereon at the rate noted herein. * * *

On all seines from sixty (60) fathoms to two hundred (200) fathoms, Fifty Dollars; over two hundred (200) fathoms, for each additional twenty fathoms, five dollars. Provided, that should any salt water fish or crustaceans happen to be caught in said seine or seines drawn for the purpose of catching salt water shrimp, no separate or additional license shall be exacted therefor from any non-resident, firm or corporation not domiciled within the State."

* * * * *

Act 183 of 1912

AN ACT

"To prohibit the use of fish drying platforms during the months of May, June and July; to limit the

length of certain fish to be taken and had in possession for sale; to prohibit interference with persons engaged in the lawful fishing and sale of salt water fish; and to fix the licenses to be paid by salt water fishermen; and to prescribe penalties for the violation of provisions herein contained.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That it shall be and is hereby declared unlawful for any person engaged in commercial fishing to erect or operate for commercial purposes during the months of May, June and July, any fish drying platforms or other contrivance for the drying of fish taken during such months.

Section 2. Be it further enacted, etc., That it shall be unlawful for any person to take or to have in his possession for sale at any time any salt water fish under the length of eight inches other than bream, croakers or sea-perch.

Section 3. Be it further enacted, etc., That no person engaged in the fishing of salt water fish for commercial purposes shall be molested or interfered with either on the water or at the docks of this State, so long as they respect the prohibitions herein contained, and possess the license herein provided.

Section 4. Be it further enacted, etc., That whoever shall violate any of the provisions of this act shall, upon conviction thereof, be punished by fine or imprisonment or both at the discretion of the Court.

Section 5. Be it further enacted, etc., That no

license shall be charged for seining for salt water fish with seines of less than one hundred and thirty fathoms length, and for the operation of seines of greater length, a license of five dollars shall be paid for seines of one hundred and thirty fathoms or over and less than two hundred fathoms seines from two hundred fathoms to three hundred fathoms in length shall pay a license seven and one half dollars; all seines over three hundred fathoms shall pay a license of seven and one half dollars with an additional one dollar for each twenty fathoms over three hundred fathoms in length."

Act 42 of 1914

AN ACT

"To authorize the Conservation Commission to grant the right and privilege to any person, firm or corporation to take oyster shells or shell deposit from the shell reefs of this State; to fix the minimum price per cubic yard for such shells or deposits for which such right or privilgees may be sold and granted; to provide certain terms and conditions under which such right or privilege may be granted, and to authorize the Conservation Commission to require or provide additional terms and conditions for the protection of the rights of property of the State.

Sec. 1. Be it enacted by the General Assembly of the State of Louisiana, That the Conservation Commission be and is hereby authorized and empowered to sell and grant unto any person, firm or corporation

the right and privilege of taking oyster shell deposits from any of the shell reefs within the boundaries of this State and located in or on the borders of the Gulf of Mexico, or of any of the bays, lakes, inlets or waterways connected with or emptying into the said gulf, or into any such bays, lakes or inlets."

* * *

Act 193 of 1916

AN ACT

"To amend and re-enact Sections 4, 5, 6, 7 and 8 of Act No. 245 of the General Assembly of the State of Louisiana for the year 1910, and to repeal Section 10 of this same act, and entitled an act for the protection of salt water shrimp; to provide the manner in which said crustaceans may be caught; to fix the season in which they may be caught; to authorize the issuance of licenses to seine, and to provide penalties for the violation of this Act, as amended and re-enacted (Sections 4 and 7) of Act No. 168 of 1912 and by Act No. 59 of 1914, and as amended (Section 8) of Act No. 168 of 1912.

* * *

Sec. 7. Be it further enacted, etc., That it shall be unlawful for any resident person, firm or corporation, or firm or corporation domiciled within the State to set or draw or attempt to set or draw any seine of forty (40) fathoms, and upward in length, or any other device, in any waters of the State for the purpose of catching salt water shrimp, unless a license fee has been paid thereon at the rate noted herein * * *

Sec. 8. Be it further enacted, etc., That it shall be unlawful for any unnaturalized foreign-born resident or for any non-resident firm or corporation not domiciled within the State, to set or draw, or attempt to set or draw, any seine of forty (40) fathoms and upward in length, or any other device, in any of the waters of the State, for the purpose of catching salt water shrimp, unless a license fee has been paid thereon at the rate noted herein * * * On all seines from 40 fathoms to 200 fathoms in length, fifty & No/100 ($50.00) dollars; from 200 fathoms to 300 fathoms in length, seventy five & No/100 ($75.00) dollars; over 300 fathoms seventy five and no/100 ($75.00) dollars and in addition thereto five and no/100 ($5.00) dollars for each additional twenty (20) fathoms or fraction thereof. * * * "

Act 6 of 1917

AN ACT

"To make it unlawful for any person or persons, knowingly or wilfully to take or carry away oysters, shells, or clutch from any leased water bottoms belonging to, and within the jurisdiction of, the State of Louisiana, without the permission of the lessee thereof; to define such offense as a misdemeanor; to provide for the punishment for the violation of the provisions of this Act, and to prescribe and fix the penalty for such violation; and to repeal all laws or parts of laws, contrary to or inconsistent herewith.

Sec. 1. Be it enacted by the General Assembly of the State of Louisiana, That it shall be unlawful

for any person or persons knowingly or wilfully to take, carry away, or attempt to take or carry way, without the permission of the lessee, any oysters, shells, or clutch from the water bottoms of the Gulf of Mexico, or the lakes, bays, inlets, lagoons, rivers, bayous, or other waters tributary thereto or connected therewith, within the jurisdiction of the State of Louisiana, which said bottoms are, at the time of such taking, let or leased to any person, firm, or corporation under the laws of Louisiana, for the purpose of bedding, planting propagating, or cultivating oysters."

* * *

Act 86 of 1918

AN ACT

"For the protection of salt water shrimp; to provide the manner in which said crustaceans may be caught; to fix the seasons in which they may be caught; to authorize the issuance of licenses to seine, and to provide penalties for the violation of this Act.

Sec. 1. Be it enacted by the General Assembly of the State of Louisiana, That all salt water shrimp found in waters of this State shall be and are hereby declared to be the property of the State.

Sec. 2. Be it further enacted, etc., That no person within the State of Louisiana shall catch or have in possession, living or dead, any salt water shrimp, or part thereof, or purchase, sell, or offer for sale, any such shrimp, or part thereof, after same have been caught, except as otherwise permitted.

Sec. 3. Be it further enacted, etc., That it shall be unlawful for any persons, firm or corporation to catch salt water shrimp by using a seine which exceeds forty (40) fathoms in length, or other device, except by permission of the Department of Conservation as to such devices; provided the using of trawls in any of the inside waters of the State at any time shall be prohibited when in the opinion of the Department of Conservation the using of said trawls in the inside waters of the State for taking salt water shrimp is detrimental to the interests of the State, except as may be provided herein. * * *

* * *

Sec. 7. Be it further enacted, etc., That it shall be unlawful for any person, firm, or corporation, resident or domiciled in this State to set or draw, or attempt to set or draw any seine of forty (40) fathoms and upwards in length or to set or draw, or attempt to set or draw any other device, in any waters of the State for the purpose of catching salt water shrimp, unless an annual license fee has been paid thereon at the rate noted herein * * *

Sec. 8. Be it further enacted, etc., That it shall be unlawful for any unnaturalized foreign-born resident or any non-resident, firm or foreign corporation or firm or corporation not domiciled within this State, to set or draw, or attempt to set or draw any seine of forty (40) fathoms and upwards in length or to set or draw or attempt to set or draw any other device in any waters of the State for the purpose of

catching salt water shrimp, unless an annual license fee has been paid thereon at the rate noted herein * * * On all seines from 40 fathoms to 200 fathoms in length, fifty and 00/100 ($50.00) dollars; from 200 fathoms to 300 fathoms in length, seventy-five and 00/100 ($75.00) dollars; over 300 fathoms in length, seventy five and 00/100 and in addition thereto five and 00/100 ($5.00) dollars for each additional twenty (20) fathoms or fraction thereof; * * * "

Act. 105 of 1918

AN ACT

"To amend and re-enact Sections 1, 8 and 10 of Act 127 of 1912, as amended by Act 66 of 1916 and Act 45 of 1916, entitled:

To create and establish a Department Conservation, defining its duties and powers and constituting it a department of the Government to provide for necessary employees and defining their qualifications, duties and powers in relation to the protection of birds, fish, shell fish and wild quadrupeds; forestry and mineral resources of the State * * *

* * *

Sec. 2. Be it further enacted, etc., That Section 8 of the Act of 127 of 1912, be and the same is hereby amended and re-enacted to read as follows:

"That the Commissioner of Conservation shall require such boats and other movable property as may be necessary to regulate and supervise the work of said Department of Conservation, and shall estab-

lish suitable armed patrols on the waters of the State or on the land, to prevent the violation of any of the conservation laws of the State relating to birds, wild quadrupeds, and other game, fish, shell fish, oysters, forests, mines and minerals, and waterbottoms; and shall have the power to appoint competent men throughout the State to be known as 'Conservation Agents,' with the authority to carry arms concealed while in the performance of their duties, who shall have full power under the law to enforce all laws for the protection of the natural resources of the State."

* * * * * *

Act 106 of 1918

AN ACT

"To amend and re-enact the title and Sections 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 22, 34, 35, 36, 39, 63, and 64, of Act No. 204 of the General Assembly of 1912, as amended by Acts 47 of 1914, 174 of 1916, 258 of 1916, and 272 of 1916, entitled: 'An Act to conserve the natural resources of the State of Louisiana, including the natural resources of the State of Louisiana, including the natural wild life on land and in the waters of the State, and, also, the soil, mineral and forestry resources of the State; to provide a code of laws governing the conservation of the natural resources of the State; to vest in the State the title to all wild life of the State and to provide in what manner such wild life may be subject to private ownership * * * "

Act 139 of 1924

AN ACT

"To amend and re-enact the title and section 1 and 6 of Act No. 54 of 1914 entitled: 'An Act to regulate the oyster industry of the State of Louisiana, by recognizing and declaring the ownership of the State to all water bottoms or beds of streams, bayous, lagoons, lakes, bays, rivers and canals, along the coast of the Gulf of Mexico within the jurisdiction of Louisiana, by prohibiting their alienation in fee simple, by recognizing and de-declaring the ownership of the State in and to all oysters growing thereon by limiting the riparian owners to ordinary low water mark; by providing for the leasing of the oyster lands of water bottoms belonging to the State; * * *

* * *

OYSTER REEFS AND BOTTOMS

Sec. 1. That all beds and bottoms of rivers, bayous, lagoons, lakes, bays and sounds and inlets bordering on, or connecting with the Gulf of Mexico, and that part of the Gulf of Mexico within the the jurisdiction of the State of Louisiana, including all natural oyster reefs and all oysters and all other shell fish growing thereon, shall be, continue and remain the property of the State of Louisiana, except as otherwise provided, and shall be under the exclusive control of the Conservation Commission of Louisiana. The Commission may permit the use of said bottoms and reefs for the purpose of fishing, taking, bedding and raising oysters and all other shell fish, subject to the restrictions imposed by law, and the regulations

of said Commission, in so far as they do not conflict with the laws of the State, and nothing in this Act shall be so construed as affecting in any way the leasing of said water bottoms for mineral purposes under the provisions of Act 30 of the Extra Session of 1915.

No grant, sale or conveyance of the lands forming the bottoms of said bodies or streams of water shall hereafter be made by the Register of the Land Office, by any other official or by a subordinate political corporation.

ACT 258 of 1926.

AN ACT

"To declare all oysters and parts thereof in the waters of the State to be the property of the State of Louisiana, and to provide the manner and extent of their reduction to private ownership; to encourage, protect, conserve, regulate and develop the oyster industry of the State of Louisiana; to provide penalties for violations of the provisions of this Act and to repeal all laws in conflict herewith.

BOTTOMS AND OYSTERS BELONG TO STATE

Sec. 1. Be it enacted by the Legislature of Louisiana, That all beds and bottoms of rivers, streams, bayous, lagoons, lakes, bays, sounds and inlets bordering on, or connecting with the Gulf of Mexico, in this State, and that part of the waters of the Gulf of Mexico, within the territorial jurisdiction of the State of Louisiana, including all oysters and other

shell fish and parts thereof, grown thereon, either naturally or cultivated, and all oysters in the shells after the same shall have been caught or taken therefrom, shall be, continue and remain, the property of the State of Louisiana, until the title thereto shall be divested in the manner and form herein authorized; and shall be under the exclusive control of the Department of Conservation of the State of Louisiana until the right of private ownership shall vest therein, as herein provided.

MINERAL RIGHTS

Nothing in this Act shall be so construed as affecting in any way the leasing of said waters for mineral purposes under the provisions of Act No. 30 of the Legislature of 1915, providing that if the mineral rights on any water bottom previously leased for oyster culture are granted by the State it shall be done only with the written consent previously obtained of the lessee of such water bottoms for oyster culture purposes, or by previous compensation, of adequate amount, paid to said oyster lessee by said mineral lessee for any and all damages sustained by said oyster lessee.

NO SALE OF BOTTOMS TO BE MADE

No grant, sale or conveyance of the lands forming the bottoms of water shall hereafter be made by the Register of the State Land Office, or by any other official, or by any subordinate political corporation. The rights of the owners or occupants of lands on the shores of any of the waters hereinbefore describ-

ed shall extend to the ordinary low mark only and no one shall own in fee simple any bottoms of lands, covering the bottoms of water hereinbefore described.

WHO MAY TAKE OYSTERS AND LEASE BEDDING GROUNDS

Section 2. That the right to catch and take, can, pack, shuck or deal in or transport oysters from the waters of this State, and the right to lease bedding grounds for the cultivation and propagation of oysters for any of said purposes within any waters within the territorial jurisdiction of the State is hereby granted to any bona fide resident of this State * * * No person, firm, association or corporation, not a resident of or domiciled in this State is, or shall be, permitted to catch, take, can, pack, shuck, deal in or transport any oysters taken from the waters of this State, or lease any bedding grounds for the cultivation and propagation of oysters for any of the above purposes. * * * *

OYSTER SHELLS OR OYSTERS IN SHELLS NOT TO BE SHIPPED OUT OF STATE

Section 3. That it shall be unlawful for any persons, firm or association, or corporation to ship beyond the limits of this State any oysters, caught or taken from the waters of this State, while the same are in the shells, or to export from this State, any raw oyster shells. Such oyster shells are hereby declared to be the property of the State as one of its natural resources

necessary for use as clutch in the propagation and development of the oyster industry in the State in order that a valuable food supply for its citizens may be conserved and developed. * * * * * * * * *

Act 67 of 1932

AN ACT

"To declare all bi-valves and parts thereof in the waters of the State to be the property of the State of Louisiana; to provide the manner and extent of their reduction to private ownership; to encourage, protect, conserve, regulate and develop the bi-valve industries of the State of Louisiana; and to provide penalties for violation of the provisions of this Act and to repeal all laws in conflict herewith

Sec. 1. Be it enacted by the Legislature of Louisiana, That all beds and bottoms of rivers, streams, bayous, lagoons, lakes, bays, sounds, and inlets bordering on, or connecting with the Gulf of Mexico, within the territorial jurisdiction of the State of Louisiana, including all oysters and other shell fish and parts thereof, grown thereon, either naturally or cultivated, and all oysters in the shells after the same shall have been caught or taken therefrom, shall be, continue and remain the property of the State of Louisiana, until the title thereto shall be divested in the manner and form herein authorized; and shall be under the exclusive control of the Department of Conservation of

the State of Louisiana until the right of private ownership shall vest therein, as herein provided. * * * * * * * *

Sec. 4. That the Department of Conservation shall have the power to lease to any resident, any firm composed or residents of this State, or to any corporation domiciled in or organized under the laws of this State, any and all water bottoms and natural reefs in the waters of this State, under the limitations herein stipulated. * * * * * *

Sec. 6 * * * The benefits of this Act and the restrictions thereof, shall extend to all leases of oyster bedding grounds heretofore made by the State through the Police Juries, the Oyster Commission, the Board of Commissioners for the Protection of Birds, Game and Fish, the Conservation Commission of Louisiana, and the Department of Conservation of Louisiana, and upon the termination of such original leases, such tenants shall have the right of renewing their leases, under the provisions and restrictions of this Act. * * * * * *

Sec. 21. That the Department of Conservation shall acquire such boats, vessels and other property as may be necessary to regulate and supervise the work of the Department, and shall establish and maintain by means of armed vessels, the necessary patrol of the waters described in Section 1 of this Act with authority to use such arms and force as may

be necessary to capture any vessel, or person or persons violating any of the provisions of this Act."

* * *

Act 68 of 1932

AN ACT

"To conserve and protect fish and all other aquatic life of commercial or economic value, existing in this State, excepting alligators and commercial salt water shrimp; declaring the title to same vested in the State in its sovereign capacity; to regulate the time, manner, extent and conditions under which the taking, possessing, transporting and disposing of same shall be lawful; to fix penalties for the violation of the provisions of this Act; and to repeal certain laws or parts of laws in conflict therewith.

* * *

Sec. 2. The ownership of all fish, as defined herein, or the parts thereof, or their products, existing in the State of Louisiana shall be and are hereby declared to be in the State of Louisiana in its sovereign capacity, and shall not be taken, sold or had in possession, except as otherwise permitted herein, and the title of the State of Louisiana to all such fish, even though taken in accordance with the provisions of this Act, shall always be and remain in the State of Louisiana for the purpose of regulating and controlling the use and disposition thereof.

Sec. 3. The Exclusive control of the fisheries and the fishing industry of Louisiana shall be vested in the Department of Conservation of the State of Louis-

iana, which shall be required to enforce the provisions of the laws regulating said fisheries and said industries, and all fish taken, possessed or transported contrary to the provisions of this Act, shall when found, be confiscated by any Conservation Agent, or other officer duly authorized to enforce the conservation laws.

* * *

Sec. 5. For the purpose of this Act, the waters of the State of Louisiana shall be divided into two classes; Fresh Waters and Coastal Waters. The fresh waters shall include all waters in which there is no regular ebb and flow of the tide. The coastal waters shall include all waters within which the tide regularly ebbs and flows.

Act 206 of 1932

AN ACT

"Relative to the sea foods industries of the State of Louisiana, authorizing the Commissioner of Conservation of Louisiana, in his discretion, to authorize, in the commercial utilization of the sea foods produced from the salt water of the State, such sea foods being the property of the State, the making of contracts by fishermen or canners of these products calculated to develop these industries in the State of Louisiana and to increase the State's revenues therefrom; and to declare such contracts, when so approved, to be legal.

Sec. 1. Be it enacted by the Legislature of Louisiana, That it is hereby declared to be the policy of the State of Louisiana to foster and encourage the

sea foods industries of the State which utilize and convert into valuable articles of commerce the shrimp, oysters and other sea food resources owned by the State in her sovereign capacity, and, from their utilization of which, the State derives large direct revenue in the form of severance taxes."

Act 210 of 1936

AN ACT

"To amend and re-enact Sections 1 and 29 (as amended by Act 116 of 1934) and Section 23 of Act 68 of 1932, entitled: 'An Act to conserve and protect fish and all other aquatic life of commercial or economic value, existing in this State, excepting alligators and commercial salt water shrimp; declaring the title to same vested in the State in its sovereign capacity; * * *

* * *

Act 10 of the Extra Session of 1940

AN ACT

"An Act to declare all shrimp and parts thereof in the waters of the State to be property of the State of Louisiana, and to provide the manner and extent of their reduction to private ownership; to encourage, protect, conserve, regulate and develop the shrimp industry of the State of Louisiana; to provide penalties for the violation of the provisions of this Act, and to repeal all laws in conflict herewith."

Sec. 1. Be it enacted by the Legislature of Louisiana, That all salt water shrimp existing in the waters of this State, and the hulls and all parts of said

salt water shrimp shall be and are hereby declared to be the property of the State; until the title thereto shall be divested in the manner and form herein authorized and shall be under the exclusive control of the Department of Conservation of the State of Louisiana * * *

* * *

Sec. 3. That for the purpose of this Act, the waters of the State of Louisana shall be divided into (2) classes, to be known as inside waters and outside waters. The outside waters shall include that portion of the Gulf of Mexico within the boundaries of the State of Louisiana. All other waters of the State within which the tide regularly rises and falls shall be classed as inside waters. In the inside waters shall be included: Timbalier Bay, East Cote Blanche Bay, Atchafalaya Bay, West Barataria Bay, and all other bays and sounds found along the Louisiana Coast of the Gulf of Mexico.

* * *

Sec. 4. * * * It shall be unlawful for any person not a resident of this State, or for any firm or association not composed of residents of this State, or for any corporation not domiciled in or incorporated under the laws of this State, to catch salt water shrimp in the waters of this State, or to can, pack or dry in any factory or on any platform in this State, any salt water shrimp caught from the waters of this State;

* * *

Sec. 15 * * * The Conservation Commissioner

of the State of Louisiana shall have authority to enter into an agreement of reciprocity with Conservation Commissioners of other Departments, or other proper officials of other States, whereby the citizens of the State of Louisiana may be permitted to take or catch shrimp from the waters under the jurisdiction of such other States upon similar agreement, to allow such non-residents to catch shrimp within the boundaries of the State of Louisiana * * *"

Act 143 of 1942

AN ACT

"To declare all salt water shrimp and parts thereof in the waters of the State to be the property of the State of Louisiana, and to provide the manner and extent of their reduction to private ownership; to encourage, protect, conserve, regulate and develop the shrimp industry of the State of Louisiana * * *

Sec. 1. The following definitions and constructions are made part of this Act shall be used in construing its meaning and purposes, to-wit:

'Salt water shrimp' shall mean and include all species of shrimp of commercial or economic value found in the coastal waters of the State and in the Gulf of Mexico contiguous to the Louisiana coast; including the 'common salt water shrimp'; the 'Brazilian' or 'grooved shrimp' (penaeus brasiliensis); and the 'sea bob' or 'six barbes' (Xiphopenaeus kroyeri).

* * *

Sec. 2. The ownership of all salt water shrimp,

as defined herein, or the parts thereof, including their hulls and other products, existing in the waters of the State of Louisiana, shall be and are hereby declared to be in the State of Louisiana, in its sovereign capacity, and shall not be taken, sold, or had in possession, except as otherwise permitted herein, and the title of the State of Louisiana to all such shrimp, even though taken in accordance with provisions of this Act, shall always be and remain in the State of Louisiana for the purpose of regulating and controlling the use and disposition thereof.

Sec. 3. The exclusive control of the shrimp fishery and the shrimp industry of Louisiana shall be vested in the Department of Conservation of Louisiana, which shall be required to enforce the provisions of the laws regulating said fishery and said industry * * *

* * *

Sec. 5. For the purposes of this Act, the coastal waters of the State of Louisiana shall be divided into two (2) classes, to be known as inside waters and outside waters. The outside waters shall include that portion of the Gulf of Mexico within the boundaries of the State of Louisiana and all outer passes leading into the Gulf in which the water is three (3) fathoms or more in depth. All other waters of the State within which the tide regularly rises and falls or into which salt water shrimp migrate shall be classed as inside waters. The inside waters shall include Chandeleur Sound, Breton Sound, Bastien Bay, Bara-

taria Bay, Timbalier Bay, Terrebonne Bay, Caillou Bay, Atchafalaya Bay, East Cote Blanche Bay, West Cote Blanche Bay, Vermilion Bay and all other bays and sounds along the Louisiana coast, and all other waters in and contiguous to the Gulf of Mexico whether or not partly enclosed by islands, sand pits, marshes, or delta fingers, wherein the water is less than three (3) fathoms in depth, including all waters contiguous to the active delta passes of the Mississippi River wherein the water is less than three (3) fathoms in depth.

Sec. 6. That the right to take salt water shrimp from the waters of this State and the right to process said shrimp are hereby granted to any person resident of this State, to any firm or association composed of residents of this State and operating a shrimp processing plant in this State. It shall be unlawful for any person not a resident of this State, or for any firm or association not composed of residents of this State, or for any corporation not domiciled in or incorporated under the laws of this State, to take, sell or process salt water shrimp in this State * * *

The restriction prohibiting non-resident persons from taking or processing salt water shrimp, shall not apply to the Citizens of any State which, at the time of the passage of Act 314 of 1940, had in effect a reciprocity agreement with this State made under

the authority of Act 10 of the First Extraordinary Session of the Louisiana Legislature of 1940.

* * *

Sec. 9. It shall be unlawful to take salt water shrimp with any seine, trawl or other device with a mesh less than three fourths of an inch (¾") 'bar' or one and one half of an inch (1½") stretched, except as provided for in Section 7, for the taking of shrimp for bait. The use of seines over three thousand (3000) feet is hereby prohibited."

Act 227 of 1944

AN ACT

"To provide for the location, designation, preservation, policing, and administration of 'Oyster seed grounds' in the 'inside waters' of the State of Louisiana; to include therein, as may be selected by the Department of Conservation any water bottoms belonging to the State of Louisiana, such privately owned oyster bedding ground leases as may be found within the designated limits of such locations * * * * *"

* * * * * * * * *

Act 78 of 1946

AN ACT

"An Act to declare all salt water shrimp and parts thereof in the waters of the State to be the property of the State of Louisiana, and to provide the manner and extent of their reduction to private ownerships; to encourage, protect, conserve, regulate and develop the shrimp industry of the State of Louisiana * * *

* * *

Section 3. The exclusive control of the shrimp fishery and the shrimp industry in Louisiana shall be vested in the Department of Wild Life and Fisheries of Louisiana, which shall be required to enforce the provisions of the laws regulating said fishery and said industry, and all shrimp or parts thereof, taken, possessed or transported contrary to the provisions of this Act, shall when found, be confiscated and disposed at discretion by the Department of Wild Life and Fisheries.

To secure the effective protection of shrimp, the Commissioner is required to appoint conservation Agents whose entire time shall be, under the direction of the Commissioner, devoted to the performance of their official duty under this Act. * * *

* * *

Sec. 7. That it shall be unlawful for any person to take, or have in possession, sell or offer for sale any salt water shrimp taken from the inside waters of the State, between the dates of December 15th and March 15th; and from inside and outside waters between June 10th and 2nd Monday in August of any one year. * * *

* * *

Sec. 10. It shall be unlawful to use a shrimp seine or trawl unless an annual license fee has been paid thereon to the Department of Wild Life and Fisheries as follows: On each separate salt water shrimp seine, or other webbing, one hundred (100) feet or more in length and less than five hundred (500) feet,

the license fee shall be ten ($10.00) Dollars per annum; on each separate seine five hundred (500) feet or more and less than two thousand (2,000) feet, or more and not over three thousand (3,000) feet, the license fee shall be Twenty-five ($25.00) Dollars. * * *

No vessel shall be licensed or permitted to engage in commercial shrimp, fishing or freighting operations in Louisiana waters unless the same has been registered at a customs port within the State of Louisiana, and the owner of such vessel is a bona fide resident citizen of the State of Louisiana, which fact shall be shown by written application accompanied by applicant's affidavit; provided, however, that vessels owned or operated by bona fide citizens of any state which has heretofore entered into a reciprocal agreement with the State of Louisiana under the authority of Act 10 of the First Extraordinary Session of the Louisiana Legislature of 1940 may be licensed under this act to engage in such shrimp fishing and freighting operations in only those waters of the State of Louisiana lying east of a line extending south from the mouth of East Pearl River and bounded on the south by the north shore of Bayou LaLoutre and Point Chicot; and east of a line described as running from Point Chicot in a southwesterly direction to Battledore Reef, as shown on United States Coast and Geodetic Survey Chart No. 1272; thence southeasterly to a point 3 miles off-shore from the mouth of Main Pass of Cubit's Gap; thence southeasterly to a point 3 miles off-shore from the mouth of North Pass of Pass A Loutre; thence southerly to a point 3 miles off-shore

from the mouth of Northeast Pass; thence southerly to a point 3 miles off-shore from the mouth of Southeast Pass; thence southwesterly to a point 3 miles southeast from the mouth of South Pass; thence south to the outer boundary of the state of Louisiana.

Bona fide citizens of such reciprocating states, and boats owned by such bona fide citizens, shall be permitted to catch or take and transport shrimp from those waters of the State of Louisiana as so described upon payment of the same licenses and taxes as are levied upon bona fide citizens of the State of Louisiana and upon boats owned by them.

* * *

" * * * For the purpose of this Act the jurisdiction of the courts of any parish shall extend to the limits of the State's sovereignty over tidal waters and the bottoms thereof; and proceedings may be brought in the Parish where the offense occurs or at the home port of any vessel. * * *

* * *

Sec. 18. This Act is primarily deemed to be in compliance with the direction of the Constitution of 1921, Article VI, Section 1, as amended by Act 328 of the Legislature of 1944, approved November 7, 1944, directing the Legislature to enact laws to protect and conserve the natural resources of this State and to prohibit and prevent the waste or wasteful use thereof; to the end that the food supply shall not be de-

pleted by negligence or intent; and to protect this valuable property of all the people * * *

2. LOUISIANA LEGISLATIVE ACTS RELATING TO OIL, GAS AND MINERALS

Act 196 of 1910

AN ACT

"To create a Conservation Fund by levying, collecting and enforcing payment of an annual license tax upon all persons, associations of persons, or business firms and corporations, pursuing the business of severing timber and minerals from the soil; and prescribing the mode and method in which said persons subject to license tax shall make report of their business."

* * *

Act 254 of 1910

AN ACT

"To establish a department of mining and minerals, including oil and gas production, to provide for its proper administration, to provide for the service of a Supervisor of Minerals and assistants; and fixing their duties and salaries; authorizing the prohibition of unsafe and wasteful mining, and providing penalties.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That there be and is hereby established a Department of Mining and Minerals, including gas and oil, to consist of the Register of the State Land Office, who shall be Ex-Officio Supervisor of Minerals, and one Deputy Supervisor of Minerals, who shall be a person having a practical know-

ledge of geology, and natural gas, and oil, and who shall be appointed and commissioned by the Governor, on the recommendation of the Conservation Commission, for the period of one year at a time;" * * *

Section 2. Be it further enacted, etc., That the Supervisor of Minerals shall make inspection, either in person or through the Deputy Supervisor, of all mining operations carried on in this State, particularly that of the production of natural gas and oil, so far as practicable, and shall see that every precaution is taken to insure the health and safety of workmen engaged in mining. He shall see that all the provisions of law pertaining to mining now in force, or hereafter enacted, particularly those provisions pertaining to the drilling of wells and piping and consumption of natural gas and oil, are faithfully carried out, and that the penalties of law are strictly enforced against any person or persons who violates the same." * * *

* * *

Act 258 of 1912

AN ACT

"Be it resolved by the House of Representatives of the State of Louisiana, the Senate concurring:

That the Governor of the State of Louisiana be and is hereby authorized to lease any vacant and unappropriated public lands belonging to the State of Louisiana, for the development and production of oil, gas, coal, salt, sulphur, lignite, and any other

minerals, under the terms and provisions hereinafter set forth."

Act 271 of 1914

AN ACT

"Authorizing the Governor to lease the vacant and unappropriated public lands and lake beds or bottoms belonging to the State, and providing the terms and conditions for such leases.

Sec. 1. Be it enacted, by the General Assembly of the State of Louisiana, that the Governor be and he is hereby authorized to lease any vacant and unappropriated public lands and lake beds or bottoms belonging to the State of Louisiana, for the development and production of oil, gas, coal, salt, sulphur, lignite, and any other minerals, under the terms and provisions hereinafter set forth."

* * *

Act 30 of 1915

AN ACT

"Authorizing the Governor to lease lands, including lake and river beds and other bottoms, belonging to the State, and providing the terms and conditions of such leases.

Sec. 1. Be it enacted by the General Assembly of the State of Louisiana, that the Governor be and is hereby authorized to lease any lands, including lake and river beds and other bottoms, belonging to the State of Louisiana, for the development and production of oil, coal, gas, salt, sulphur, lignite and

other minerals, under the terms and conditions hereinafter set forth."

* * *

Act 10 of 1916

AN ACT

"To amend and re-enact Act No. 209 of the Act of the General Assembly of 1912, entitled: 'An act to carry into effect Article 229 of the Constitution of 1898, as amended at the election in November, 1910, by levying an annual license tax upon all persons, firms, corporations or associations of persons engaged in the business of severing natural products, including all forms of timber, turpentine and minerals, including oil, gas, sulphur and salt, from the soil; * * *

Sec. 1. Be it enacted by the General Assembly of the State of Louisiana, that there is hereby levied an annual license tax for the year 1916, and for each subsequent year, upon each person, or association of persons, firms or corporation pursuing the business of severing natural products, including all forms of timber, turpentine and minerals, including oil, gas, sulphur and salt, from the soil."

Act 268 of 1918

AN ACT

"Defining waste and making the waste or undue use of natural gas in a misdemeanor, empowering the Department of Conservation with authority to prevent the use of natural gas in a manner calculated to threaten the common reservoir of natural gas with premature exhaustion, charging

the said Department with the duty to regulate the method of taking natural gas from any well and the use of natural gas;" * * *

Act 20 of 1918—Extra Session

AN ACT

"To carry into effect Article 229 of the Constitution of 1898, as amended at the election in November, 1910, by levying an annual license tax upon all persons, firms, corporations or associaitons of persons engaged in the business of severing natural products from the soil, as timber, turpentine, and minerals, including oil, gas, sulphur, and salt; and prescribing the method of collecting the license; requiring all those engaged in the severance of, and dealing in, such products to make reports of their business; to provide for the distribution of funds arising from this act; * * *

Sec. 9. Be it further enacted, etc., That one-sixth (1/6) of all of the licenses herein collected from the severance of oil and gas shall be accredited to the Department of Conservation, but this amount shall be in excess of the amount of otherwise appropriated to the Department of Conservation as its general fund, the said amount or so much thereof as may be necessary to be especially dedicated to the policing, protection, and investigation of the oil and gas resources of the state, and to further carry into effect the acts of the legislature for the better protection of the oil and gas resources of the state, and

the expense incident to the supervision of the collection of the license levied by this act.

Sec. 10. Be it further enacted, etc., That one-fourth (1/4) of all other licenses collected under this act shall be accredited to the Current School Fund for the support of the public schools; * * *"

* * *

Act 250 of 1920

AN ACT

"Granting to the Department of Conservation, created by laws of Louisiana, greater power and authority in the work of conserving the crude petroleum, natural gas and mineral substances mined or produced in the State of Louisiana, giving to the Department of Conservation power and authority to adopt and promulgate, amend and re-adopt, rules and regulations for the drilling, development, sinking, deepening and abandonment of natural gas and oil wells, and to promulgate rules and regulations for the opening and operation of all mines in the State of Louisiana: * * *"

* * *

Act 252 of 1924

AN ACT

"To conserve the natural gas resources of the State of Louisiana; to define the conditions under which natural gas can be burned into carbon black; to establish rules and regulations for the drilling for and the production of gas; to provide for the spacing of gas wells and to limit

the percentage of the open flow capacity of gas wells that may be taken from such wells and to fix the maximum percentage that may be taken from them; to give the Commissioner of Conservation of this State authority to make rules and regulations for the conservation of the natural gas resources of the state; * * *"

Act 253 of 1924

AN ACT

"To further conserve the oil natural resources of the State of Louisiana."

Sec. 1. Be it enacted by the Legislature of Louisiana, That

(1) The Department of Conservation shall have the right, when quick action is required, to secure arrests, or injunctions against violators of the conservation laws relating to minerals without the sanction of the Attorney General of the State.

(2) The Department of Conservation shall have the power to devise and enforce rules for the spacing of oil wells in any area of the State to suit the needs of each particular locality.

* * *

(3) The Department of Conservation will from time to time prescribe rules, regulations, and requirements for the conservation of crude oil, or petroleum."

* * *

Act 131 of 1934

AN ACT

"To carry into effect Sections 1 and 2 of Article VI of the Constitution of Louisiana, and the pro-

visions of Act 45 of 1930 relating to the mineral resources of Louisiana; to authorize and direct the Commissioner of Conservation to inaugurate a geological survey of the State of Louisiana; to authorize and direct the Commissioner of Conservation to cooperate with the Board of Engineers for the State of Louisiana and the United States Geological Survey to assist in making topographical quadrangles, with contours, of the State of Louisiana; to impose a special fee for drilling wells for oil, natural gas, sulphur, or other minerals, in order to raise revenue for the purpose of carrying out the provisions of this Act; and to repeal any and all laws in conflict herewith."

* * *

Act 93 of 1936

An ACT

"Relative to leasing of lands, including rights of way, road beds, lake and river beds and other bottoms, belonging to the State or the title to which is in the public for mineral development; creating the State Mineral Board and providing for its authority in respect to such leases, providing the terms and conditions of such leases, providing for the disposition of the funds realized from such leases, and making an appropriation to carry this Act into effect.

Sec. 1. Be it enacted by the Legislature of Louisiana, That there is hereby created the State Mineral Board, to be composed of the Governor (who shall ex-officio be chairman) and four members to be appointed by the Governor. * * *

Sec. 4. The Board is hereby vested with full au-

thority to lease any lands belonging to the State or the title to which is in the public, including rights of way, road-beds, lake and river beds and other bottoms, lands adjudicated to the State at tax sale, and any other lands and water bottoms by whatever title acquired, for the development thereof for and the production therefrom of oil, gas, coal, salt, sulphur, lignite and other minerals, under the terms and conditions hereinafter set forth."

* * *

Act 225 of 1936

AN ACT

"To conserve the oil, gas and sulphur resources of the State of Louisiana; to prevent waste and depletion thereof; to prevent production in excess of the reasonable market demand; defining the powers and duties of the Department of Conservation; authorizing the Commissioner of Conservation to prescribe rules, regulations and orders, and to conduct hearings for the enforcement of this Act; and providing penalties for violations hereof; and to repeal all laws or parts of laws in conflict herewith."

Act 80 of 1938

AN ACT

"To amend the title and Sections 4, 5, 7, and 20 of Act 93 of 1936, entitled an Act relative to leasing of lands, including rights of way, road beds, lake and river beds and other bottoms, belonging to the State or the title to which is in the public for mineral development; creating the State Mineral Board and providing the terms and conditions of

such leases, providing for the disposition of the funds realized from such leases * * *

* * *

Sec. 4 The State Mineral Board is hereby vested with full authority to lease any lands heretofore granted by the State and now belonging to any of the various levee districts throughout the State, and any lands belonging to the State, or the title to which is in the public, including rights of way, road-beds, lake and river beds and other bottoms, lands adjudicated to the State at tax sale, and any other lands and water bottoms by whatever title acquired, for the development thereof for and the production therefrom of oil, gas, coal, salt, sulphur, lignite and other minerals * * *"

* * *

Act 77 of 1940

AN ACT

"Relative to the conduct of geophysical and geological surveys; requiring permits for the conduct of such surveys; authorizing the Commissioner of Conservation to issue such permits under certain conditions; authorizing the State Mineral Board to adopt and promulgate certain rules, regulations and orders relative to the administration of this Act: * * *"

* * *

Act 311 of 1940

AN ACT

"To authorize and provide for the exploration and

development of public lands belonging to the State of Louisiana for the mining, drilling, production, processing, transportation and sale of oil, gas, coal, salt, sulphur, lignite and other minerals; to provide for the mineral exploration and development of such public lands by the State of Louisiana itself; to authorize the State Mineral Board to determine the advisability of and conditions under which such exploration and development shall be undertaken by the State itself; * * *

Sec. 1. Be it enacted by the Legislature of Louisiana, That the State Mineral Board, or its successor, is hereby authorized and empowered to explore for and to develop the mineral resources of any vacant and unappropriated lands belonging to the State of Louisiana, title to which is in the public, including rights of way, road beds, lake and river beds and other bottoms, land adjudicated to the State at tax sale and any other lands and water bottoms whatsoever by whatever title acquired, for the exploration and development thereof and the production therefrom of oil, gas, coal, salt, sulphur, lignite, and any other minerals, wherever in the opinion of the State Mineral Board such exploration and development by and for the account of the State is to the best interest of the State."

* * *

Act 153 of 1942

AN ACT

"To amend and re-enact Section 9 of Act 93 of 1936, as amended, entitled 'An Act relative to leasing

of lands, including lands belonging to levee boards, rights of way, road beds, lake and river beds and other bottoms, belonging to the State or the title to which is in the public for mineral development; creating the State Mineral Board and providing for its authority in respect to such leases, providing the terms and conditions of such leases, providing for the disposition of the funds realized from such leases, and making an appropriation to carry out the terms of this Act', and to repeal conflicting laws. * * *

Sec. 9. The board shall have full supervision of all mineral leases granted by the state, now in effect or hereafter entered into, in order that it may determine that the terms of any such leases are fully complied with, and generally shall have authority to take any lawful action for the protection of the interests of the state." * * *

Sec. 9. The board shall have full supervision of all mineral leases granted by the state, now in effect or hereafter entered into, in order that it may determine that the terms of any such leases are fully complied with, and generally shall authority to take any lawful action for the protection of the interests of the state." * * *

* * * * * * * * *

3. LOUISIANA CONSTITUTION

Article 6, Section 1 Of The Constitution of Louisiana

"Sec. 1. The natural resources of the State shall be protected, conserved and replenished.

(A) *Wild life and fisheries commission; director.*

For that purpose, the wild life of the state, including wild game and non-game quadrupeds or animals, game, oysters, fish and other aquatic life, are hereby placed under the Louisiana Wild Life and Fisheries Commission. The Louisiana Wild Life and Fisheries Commission shall be managed, controlled, supervised and directed by the commissioner."

* * * * * * * * *

Article 6, Section 1 (A-1) of the Constitution Of Louisiana

"(A-1) The District Courts in and for all parishes bordering upon the Gulf of Mexico or its arms or inlets shall have concurrent jurisdiction to enforce all statutes and regulations enacted or passed for the protection, preservation and propagation of wild life or salt water fish, shrimp, oysters or other salt water aquatic life in all cases arising from the violation of any such statute or regulation on, in and under the Gulf of Mexico within the territorial jurisdiction of the State of Louisiana; Provided that in case of the illegal operation of a vessel registered at a port in any one of said parishes the said vessel and all persons subject to prosecution in connection with such illegal operations shall be proceeded against in the District Court of the parish where such vessel is registered. * * *"

4. OTHER STATUTES ASSERTING LOUISIANA JURISDICTION IN THE GULF OF MEXICO

In the Legislative history of the Submerged Lands Act the Congressional Committees recommending ap-

proval of the Acts called attention to the fact that "at the request of the Executive Departments of the Federal Government, the States have deeded to the United States portions of their submerged lands lying outside the inland waters: and that "the States, during more than a Century, have been exercising the highest rights of ownership by conveying to the United States a part of the submerged lands within their boundaries." (House Report No. 215, 83rd Congress, 1st Sess., pages 42 and 43). Some of the Acts of the Louisiana Legislature relating to the subject are digested hereinbelow.

"Act No. 117 of 1855

AN ACT

Authorizing the Executive to relinquish to the United States, in certain cases, title to and jurisdiction over lands for sites of Lighthouses, etc., on the coast and waters of Louisiana.

Whereas, the Congress of the United States has made appropriations for the construction of certain lighthouses, not yet built, on the coast and waters of this State, and the wants of commerce may hereafter call for the construction of others; and whereas, the laws of the United States require that said United States should hold exclusive title to and jurisdiction over all lands to be occupied as sites of public works, before any such work can be begun. Therefore:

Section 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened, That whenever a tract of land,

containing not more than twenty acres, shall be selected by an authorized officer or agent of the United States, for the bona fide purpose of erecting thereon a lighthouse, beacon, or other public work, and the title to the said land shall be held by the State, then, on application of the said officer or agent to the Governor of the State, the said Executive is hereby authorized to transfer to the United States the title to and jurisdiction over said land;"

Louisiana Revised Statutes of 1870

Sec. 2948. "Whenever a tract of land, containing not more than twenty acres, shall be selected by an authorized officer or agent of the United States, for the bona fide purpose of erecting thereon a lighthouse, beacon, or other public work, and the title to the said land shall be held by the State, then, on appplication of the said officer or agent to the Governor of the State, the said executive is hereby authorized to transfer to the United States the title to and jurisdiction over said land; Provided, That if the said lighthouse should not be built within five years from the date of the transfer, the jurisdiction over the same and the title of the land if it had been transferred by the Governor, shall revert to the State."

Act 13 of 1871

AN ACT

Giving the consent of the Legislature of the State of Louisiana to the purchase by the United States of land within this State for public purposes.

Sec. 1 Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That the consent of the General Assembly of the State of Louisiana be and the same is hereby given to the purchase by the Government of the United States, or under the authority of the same, of any tract, piece or parcel of land from any individual or individuals, bodies politic or corporate, within the boundaries or limits of the State, for the purpose of erecting therein lighthouses and other needful public buildings whatever, * * the consent, herein and hereby given, being in accordance with the seventeenth clause of the eighth section of the first article of the Constitution of the United States, and with the acts of Congress in such cases made and provided.

Act 11 of 1921

AN ACT

To authorize and direct the Governor to withdraw from sale or entry any of the vacant and unappropriated public lands belonging to the State of Louisiana, now existing or hereinafter acquired by accretion or otherwise, that may be required to maintain, for the benefit of the State of Louisiana, the navigability of the channels of and at the mouth of the Mississippi River.

Whereas the United States Government through its War Department, Chief of Engineers, has requested the cooperation of the State of Louisiana in maintaining the navigability of the channels of and at the mouth of the Mississippi River, and

Whereas, the commercial prosperity of the State

of Louisiana, of the Mississippi Valley, and of the Nation is dependent upon the maintenance of these channels; and it is necessary that certain of the State's lands be retained in public ownership for said purpose.

Sec. 1 Be it enacted by the Legislature of Louisiana that the Governor of the State of Louisiana be and he is hereby authorized and directed to withdraw from sale or entry any of the vacant and unappropriated public lands belonging to the State of Louisiana, now existing or hereafter acquired by accretion or otherwise, located south of the following lines and described and bounded as follows to-wit:

All of that area bounded on east by the axis of the Mississippi River to the Head of the Passes at the mouth of the Mississippi River bounded on the Northwest by a line, commencing at Cubits Gap Light house and running south thirty-five degrees (35°) west (true bearing) through Cubits Gap Light house, latitude 29° 11′ 36.70″ north, longitude 89° 15′ 53.75″ west; bounded on the northeast by a line beginning on and at the axis of the Mississippi River at a point, north of the head of the Passes of the Mississippi River, and at the juncture of the channels of the Mississippi River and Pass A L'Outre, and running along and through the channel of Pass A L'Outre, along and through the channel of the North Pass, north of Pass A L'Outre Light house to deep water in the Gulf of Mexico; and

bounded on the south by deep water in the Gulf of Mexico * * *"

Act 52 of 1921

"AN ACT

For the creating of a Game and Fish Preserve and Public Hunting Grounds by the setting apart of certain state lands; to provide for the control of same, for the protection of fur bearing animals, game and fish thereon; and to provide for punishment of violations of this Act.

Sec. 1. Be it enacted by the Legislature of Louisiana That all of the vacant and unappropriated public lands belonging to the State of Louisiana, now existing or hereafter acquired by accretion or otherwise, and more particularly described as follows:

All swamps and marsh lands in Township 22 South, Range 32 East, Southeastern District of Louisana, West of the Mississippi River * * *

All swamps and marsh lands in Township 23 South, Range 33 east, Southeastern District of Louisiana, West of the Mississippi River * * *

All swamps and marsh lands in Township 23 South, Range 34 East, Southeastern District of Louisiana, west of the Mississippi River.

All swamps and marsh lands in Township 24 South, Range 32 East, Southeastern District of Louisiana, West of the Mississippi River * * *

All swamps and marsh lands in Township 24 South, Range 33 East, Southeastern District of Loui-

siana, West of the Mississippi River * * *

Sec. 2. The Department of Conservation of the State of Louisiana shall have absolute control and full authority concerning the use of said lands and shall adopt rules and regulations controlling said area.

Sec. 3. It shall be unlawful to trap, hunt or fish on said preserve except under such rules and regulations as may be made by the Department of Conservation of the State of Louisiana."

Act 329 of 1948

"AN ACT

To enable the State of Louisiana to enter into a compact with other states for the purpose of promotion and better utilization of the fisheries of the Gulf of Mexico to be known as the Gulf States Marine Fisheries Compact; to provide, for representatives to the commission created thereby, and to provide an appropriation therefor.

Section 1. Be it enacted by the legislature of Louisiana, that the Governor of this state is hereby authorized and directed to execute a compact on behalf of the State of Louisiana with any one or more of the States of Florida, Mississippi, Alabama and Texas, and with such other states as may enter into the compact legally therein in the form substantially as follows:

GULF STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

Article I.

Whereas the Gulf Coast states have the proprietary interest in and jurisdiction over fisheries in the waters within their respective boundaries, it is the purpose of this compact to promote the better utilization of the fisheries—marine, shell and anadromous—of the seaboard of the Gulf of Mexico, by the development of a joint program for the promotion and protection of such fisheries and the prevention of the physical waste of the fisheries from any cause.

Article II.

This compact shall become operative immediately as to those states ratifying it whenever any two or more of the States of Florida, Alabama, Mississippi, Louisiana and Texas have ratified it and the Congress has given its consent subject to Article 1, Section 10, of the Constitution of the United States . . . "

This compact was ratified and enacted into law by the respective legislatures of the States of Florida, Alabama, Mississippi, Louisiana, and Texas, (Fla.; Laws 1947, p. 17; Miss.; Laws 1950, c. 556; La. Acts 1948, No. 329; Tex.; 1949, ch. 554), and Congress assented thereto (Public Law 66, 81st Congress).

The foregoing excerpts from various Acts of the Legislature demonstrate the fact that Louisiana has asserted jurisdiction and ownership over the waters,

the bed and the resources of the Gulf of Mexico for a long period of time. This jurisdiction and ownership has extended far out on the Continental Shelf to an extent which, in International Law, gives to Louisiana a title to the sea-bed, sub-soil and resources therein. Facts to establish the extent of Louisiana's claim and ownership can be presented by the testimony of witnesses and by official State records.

Respectfully submitted,

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PROOF OF SERVICE

I, _____ one of the attorneys for the State of Louisiana, defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that on the _____ day of _____, 1957, I served copies of the foregoing Appendix to Brief on Behalf of the State of Louisiana by leaving copies thereof at the offices of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C.

_____

OF COUNSEL